

# THE TRANS-PACIFIC PARTNERSHIP: OUTLOOK AND OPPORTUNITIES

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## HEARING BEFORE THE SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE OF THE COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES ONE HUNDRED THIRTEENTH CONGRESS

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## **THE TRANS-PACIFIC PARTNERSHIP: OUTLOOK AND OPPORTUNITIES**

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**THURSDAY, AUGUST 1, 2013**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE,  
COMMITTEE ON FOREIGN AFFAIRS,  
*Washington, DC.*

The committee met, pursuant to notice, at 1:30 p.m., in room 2200 Rayburn House Office Building, Hon. Ted Poe (chairman of the subcommittee) presiding.

Mr. POE. The subcommittee will come to order. Without objection, all members may have 5 days to submit statements, questions, and extraneous materials for the record, subject to the length limitation in the rules.

I am a strong supporter of promoting United States exports and increasing trade. To put it simply, I am a free trader. With unemployment 7.6 percent, we should be doing everything we can to create jobs for Americans, in America. Free trade agreements like the ones we have with Panama, Colombia, and South Korea grow jobs in the United States, help our economy get back on track and strengthen friendships abroad. Open trade is good policy and it makes sense.

Right now, we are in the middle of negotiating a new agreement, the Trans-Pacific Partnership or the TPP, as an opportunity for the United States to expand its trade network in the Asia-Pacific region and beyond. TPP will open trade between the United States and 11 other countries. This would make it America's largest free trade agreement. Combined, these 11 countries account for 40 percent of the global GDP; and 30 percent of the entire world trade. We can make it even bigger after TPP is signed. It is possible for more countries like Taiwan to join. And I hope that is a strong consideration.

For years now, many TPP countries have been experiencing an explosion in economic growth. The Asia-Pacific region alone is expected to grow by 6 percent this year. This means more foreign consumers will want to import U.S. goods. That, in turn, will drive job growth in our manufacturing, shipping, and services industries. To put this in perspective, TPP countries represent a \$1.7 trillion trading relationship for the United States. This makes it the largest export market for the United States.

Many Americans are excited about what TPP will bring for them and their businesses. I know this because I have been hearing from my neighbors in Houston, Texas, how TPP will benefit our area.

The Port of Houston is the biggest port in the United States on a per tonnage basis. With the expansion of the Panama Canal, we are primed to export even more to Asia. Three weeks ago, the Department of Commerce announced that Houston was the number one exporting metro area in the entire United States with a total of \$110 billion in exports last year. That number will increase once we expand our markets through TPP. Houston will be able to build upon its close ties with Canada, Japan, Mexico and Singapore and the well developed, already emerging trade relationships with Malaysia, Australia, and Chile.

America's other major shipping hubs like Los Angeles, Long Beach which my colleague, Mr. Lowenthal, represents in his district, will see a lot of growth from TPP as well. The United States needs to be involved in trade agreements with these countries, otherwise, we may find ourselves shut out of a booming market. The United States is not the only player in the international trading market. The European Union, for example, has already negotiated agreements with Canada, India, and Japan. And China, Japan, and South Korea have also been having trade talks among themselves.

At the same time, I think it is very important that we need to make sure this agreement is fair, fair to all countries concerned and it is fair to the United States. United States companies are not afraid of competing in international markets, but it is important that TPP creates a level playing field for all. And what I mean by that is we have to make sure that United States companies do not face a disadvantage from state-owned enterprises in other countries or risk having their intellectual property stolen by other nations. We need to understand the obvious and make sure that this does not occur. We need to set high standards in this area. This agreement is not about setting in stone already unfair advantages. Countries should not be able to steal American intellectual property.

TPP is more important than the specific countries involved because it has the opportunity to set a strong precedent for future American trade agreements. This will especially be true as China opens up its economy to more exports and looks to sign its own agreements, competing with us and its own agreements to join existing countries.

TPP is touted as a 21st century high-standard agreement. Our witnesses today will speak specifically about these principles and will be speaking for their industries. I look forward to hearing from them about what high quality free trade agreements should look like and what we should look out for in case there are some important issues that we may miss.

I will now yield time to the ranking member, Mr. Sherman from California.

Mr. SHERMAN. I have a different view. The definition of insanity is to keep doing the same thing over and over again and expect a different result. We have been traveling this road for 20 years. We have the largest trade deficit in the history of the world. But one bright spot, as the chairman points out, is our ports where there are good jobs unloading the imports from other countries and sending back the containers empty or crammed with waste paper.

Washington's trade policies over the last two decades have created huge profits for Wall Street and an eroding middle class here at home. Now as to this TPP, it will eliminate over 1100 tariff lines among the parties, a massive trade deal with consequences that could very well be negative. We must be skeptical of this TPP because we were not skeptical as we should have been of the earlier agreements.

The United States International Trade Commission has said our trade deficit with China would grow by \$1 billion if we provided for permanent MFN. Instead, that trade deficit exploded from \$84 billion in 2000 to \$315 billion in 2012. According to the Economic Policy Institute, the U.S. trade deficit has eliminated or displaced 2.8 million American jobs.

In the early 1990s, the supporters of NAFTA criticized their critics as being Luddite protectionists. Almost two decades later, we know what the numbers are. We have posted a trade deficit with Canada and Mexico nearly every year since the enactment of NAFTA, most recently \$62 billion with Mexico and \$31 billion with Canada.

Now I am concerned about the rules of origin which have yet to be negotiated in this deal, but we may be signing a free trade pact with China that is unilateral. That is to say, free access to our markets with us getting no access to theirs. Why? Well, let us look at the U.S.-Korea free trade agreement where goods can be 65 percent made in China. Then 35 percent South Korean content, but that includes Chinese workers living in barracks in South Korea, free access to the United States.

One trembles when we think that the same negotiators may be involved in negotiating the rules of origin agreement in this latest deal.

Let us look at the U.S.-Korea free trade agreement. Our trade deficit hit an all-time high in May of this year, \$2.46 billion in 1 month. Imports hit a record high in that month of \$5.7 billion while U.S. exports in May were only 3.2. In fact, U.S. exports to South Korea from January through May of this year were lower than U.S. exports during the same period last year before the free trade agreement.

We are going to be looking at a free trade agreement with Vietnam, a state-controlled economy. So the access we will have to their markets will be whatever their state-controlled economy decides to accept, whereas their access to our markets will be unlimited. Celeste Drake, I believe, mentions in her testimony, state-owned enterprises are common, not only in Vietnam and Malaysia, they could represent a threat to us, given America's lack of comprehensive manufacturing strategy that is particularly the case. This TPP arrangement gives those who oppose the Buy American agreements which Congress has passed a chance to try to override them through the treaty process.

And then finally, and this is a threat to our national security. We have used sanctions as an effective means of our policy and we are hoping very much to prevent a nuclear Iran through sanctions. Well, what does this agreement do? I am told that apparently, the USTR has agreed to text in which our right to impose sanctions is subject to a tribunal's review. For example, the U.S. free trade

agreement with Korea either party can have national security sanctions and that claim of national security is self-adjudicated whereas under the draft that appears we are prepared to accept a tribunal that could very well decide that we can't impose sanctions.

This agreement, therefore, poses a threat to our national security, as well as to our economy. I look forward to its substantial improvement. I yield back.

Mr. POE. I thank the ranking member for his comments. He pointed out exactly why we are having this hearing, to find out the good, the bad, and the ugly about the TPP, to put it bluntly.

The chair will recognize other members who wish to be recognized for 2 minutes.

Mr. Kinzinger from Illinois.

Mr. KINZINGER. Thank you, Mr. Chairman, and welcome to our large and overwhelming hearing room. Thank you all for coming. We are here today to discuss the possibility of the largest and most comprehensive trade agreement in our nation's history. The TPP is being negotiated by 12 countries including 4 with which we do not have existing trade relationships. No doubt, this would be an impressive accomplishment, a win for American business and middle class families.

In 2012, U.S. trade with TPP countries totaled more than \$1.5 trillion. By lowering barriers and increasing market access for U.S. companies, the trade and the American jobs it supports can be made even greater. In addition, increasing trade, achieving a high standard agreement on this scale can have positive, long-term effects for U.S. businesses and innovators. Aiming high has the potential to influence future trade negotiations, lifting standards all over the world and serving as a permanent boost for American jobs and the American economy.

There are certain issues that American trade representatives should give special priority to. These include ensuring market access to foreign countries for American agriculture producers, enhancing intellectual property right protections, ensuring regulatory transparency and competitiveness, and ensuring access for small businesses. These issues are at the core of what a 21st century trade pact should look like which is why they are included and should remain a top priority for U.S. negotiators.

Mr. Chairman, I yield back.

Mr. POE. The gentleman yields back. I am going to introduce each of the witnesses and give them time for opening statements. Without objection, all the witnesses' prepared statements will be made part of the record. I ask that each witness please keep your presentation to 5 minutes because you may be gaveled. And as a former Judge, that is not a pleasant experience.

If I mispronounce your name, I apologize. My name is Ted Poe and I have been called tadpole and many other things, so I will do the best I can with each of your names. But thank you for being here, all four of you.

Mr. Edward Gerwin, Edward Gerwin is the president of Trade Guru, LLC and provides analysis and strategic advice on trade policy for domestic and international clients. He previously served as a senior fellow for trade and global economic policy at Third Way.



Mr. Steven Metalitz is a partner in the Washington, DC, office of Mitchell, Silberberg & Knupp, LLP and counsel to the International Intellectual Property Alliance. For 20 years, he has advised on domestic and international anti-piracy and other copyright matters.

Mr. Amgad Shehata is the vice president of International Public Affairs for UPS. He is based in Washington, DC. He serves as the chair of the Canadian-American Business Council and is treasurer for the Express Association of America.

Ms. Celeste Drake is the trade and globalization policy specialist at the AFL-CIO. She actively follows negotiations for Trans-Pacific Partnership free trade agreements where she advocates for policies to ensure shared gains from trade.

Mr. Gerwin, we will start with you. You have 5 minutes.

**STATEMENT OF MR. EDWARD F. GERWIN, JR., PRESIDENT,  
TRADE GURU LLC**

Mr. GERWIN. Thank you, Mr. Chairman. Mr. Chairman, Ranking Member Sherman, and members of the subcommittee. The TPP has the potential to be a transformative 21st century trade deal—one that opens key global markets for American goods and services, while supporting stronger economic growth, good jobs for our workers, and key American values. In my prepared statement, I have discussed the TPP and its potential benefits from three different perspectives.

First, how can the TPP be a transformative trade deal for America? Second, what recent trends are relevant to U.S. trade in the Asia-Pacific region? And third, how can we determine if the TPP is a good deal of the United States?

Let me highlight a few points. The TPP can be a transformative trade deal in many ways. There are two ways that stand out. First, the TPP could strongly orient America's trade toward the Asia-Pacific, especially toward dynamic markets in East Asia. These markets are forecast to grow two, three, or even four times faster than ours. By 2020, the Asia-Pacific will add 1.2 billion new middle class consumers to the global economy.

In a report last year for Third Way, I detailed how these consumers and Asia's growing businesses increasingly want what America excels in making—from heavy equipment and healthcare to financial services and wholesome food. A growing Asia has huge potential for America's producers and workers, but to reach this potential, we will need strong agreements to clear away the many trade barriers that still block our access to the region.

The TPP could also enhance America's leverage in defining new rules for global trade. A number of key developing countries—including China and India—often support rules that protect their markets and favor their state-owned enterprises. A strong TPP could help America and like-minded countries to push back and advance an alternative vision that stresses high standards and open, transparent, and fairer trade.

My prepared statement also highlights three important trade trends that are relevant to the TPP. First, there has been an explosion in new trade deals in Asia. In the last decade alone, Asia's

trade agreements have grown from 3 to 50, and 80 deals are currently in the pipeline.

Secondly, America's share of trade into key Asian markets has been plummeting, falling by over 42 percent between 2000 and 2010. Meanwhile, China and Korea are growing their shares of these markets by 14 percent.

Third, new studies show that countries are increasingly making things together. Because of strong supply chains in our region, for example, exports from Canada and Mexico to the rest of the world often contain a very high level of American content made by American workers.

These trends highlight the need for a TPP that would get America back in the race for new trade deals, that would increase our share of trade into the region, and that would help America and American workers seize opportunities in global supply chains.

Finally, for the TPP to be a good deal for the United States, it should be comprehensive and ensure broad access to foreign markets for both goods and services. It should have high standards on issues like intellectual property and food and technical rules. And it should promote key American values like nondiscrimination, due process, and protection of workers and the environment.

If America is going to prosper in the 21st century economy, the TPP must also be part of a broader U.S. strategy—one that includes very strong trade enforcement: Investing in infrastructure, innovation, and worker training, and one that provides adequate funding for our hard-working trade officials.

Thank you again for the opportunity to testify and I very much look forward to your questions.

[The prepared statement of Mr. Gerwin follows:]

**Testimony of Edward F. Gerwin, Jr.  
President, Trade Guru LLC**

***The Trans-Pacific Partnership: Outlook and Opportunities***

**House Committee on Foreign Affairs  
Subcommittee on Terrorism, Nonproliferation, and Trade**

August 1, 2013

Mr. Chairman, Ranking Member Sherman, and Members of the Subcommittee. Thank you for inviting me to testify today on the Trans-Pacific Partnership. My name is Ed Gerwin. I'm an international trade consultant and lawyer and was previously Senior Fellow for Trade and Global Economic Policy at Third Way.

As you and your colleagues consider the TPP in the coming months, you'll hear repeatedly that the TPP can be a "21<sup>st</sup> Century" trade deal. The TPP—if done right—does have great promise to be a transformative, modern trade agreement—one that could help American producers and workers win fairer treatment for their goods and services in important global markets, while supporting stronger economic growth, good jobs, and key American values.

**The TPP as a 21<sup>st</sup> Century Trade Deal**

There are three ways in which the TPP has the potential to be a new kind of trade agreement for the United States:

*First, the TPP could strongly orient the United States toward the growing 21<sup>st</sup> Century markets of the Asia-Pacific, especially the dynamic countries of East Asia.*

Economists project that, in the coming decades, U.S. economy will grow at an annual rate of less than 2.5 percent. That would be a full percentage point less than America's average growth rate in the six decades before the Great Recession. And this slower growth would have serious negative impacts on America's fiscal position, and on jobs, wages, and the quality of life for average Americans.

Tapping into Asia-Pacific economies that are projected to grow two, three, or even four times faster than America's could provide a vital jolt to U.S. economic growth.

The IMF projects, for example, that nearly half of global growth in the next five years will be in Asia. Much of this growth will be driven by a burgeoning Asia-Pacific middle class, which will surge by an estimated 1.2 billion by 2020 and make up half of the world's middle class consumers. These increasingly urban and affluent consumers will want high-quality goods, Western foods, modern financial services, and vacation travel. And, together with Asia's rapidly expanding business sector,

they'll press for modern infrastructure and increased spending on education, health care, and the environment.

Here are a few of the many examples of how a fast-growing Asia will drive global demand:

- The UN estimates that Asia needs to spend \$600 billion annually, just for infrastructure to support new development.
- By 2020, Asia's demand for food will double, to some \$3 trillion.
- Boeing projects that surging Asia-Pacific air travel will require 11,450 new aircraft, valued at \$1.5 trillion, by 2030.

As I detailed in a September 2012 report for Third Way, America's producers and workers are extraordinarily well positioned to seize these and many other opportunities in the Asia-Pacific.

Among its many strengths, the United States is the world's largest manufacturer, a global power in food production, and the #1 global exporter of services. Our companies are world leaders in construction equipment, infrastructure, and environmental services. We supply a third of the world's corn, cotton, and soybean exports and are home to a third of the world's leading food and beverage producers. Our companies are global leaders in health services, drugs, and medical devices, as well as finance and logistics. And we excel in building the planes, trains, and vehicles that move people and cargo around the world.

In short, America makes what the Asia-Pacific increasingly wants.

But for America to reach its full potential in a fast-growing Asia-Pacific, we'll need a strong and comprehensive TPP to overcome steep trade barriers in key regional markets, including duties that average many times higher than America's, and a wide array of unfair technical, farm, service, and regulatory barriers.

*Second, the TPP can address new issues that America's exporters must overcome if they are to compete and win in the global economy of the 21<sup>st</sup> Century.*

As countries continue to eliminate high duties and the most egregious non-tariff trade barriers, U.S. negotiators are increasingly focusing on a series of new, cross-cutting issues that can significantly impede U.S. trade—especially for the small and medium-sized enterprises (SMEs) that make up over 97 percent of America's exporters.

Our TPP negotiators are, for example, seeking e-commerce rules that would assure the free flow of data over the Internet, and rules requiring that competition laws be applied and enforced in a fair, transparent, and non-discriminatory manner. And TPP negotiators are scrubbing all sections of the TPP to assure that its various provisions are as user-friendly as possible for our SMEs.

Inconsistent and duplicative regulations and other regulatory barriers can significantly increase the cost and complexity of American trade—without advancing vital health, safety, financial, or environmental protections. For example, regulatory differences between the United States and Canada require General Mills to run separate production lines for Cheerios sold in Canada and the United States, while Campbell's is required to sell soup in different-sized cans in the two markets.

The TPP could help assure greater coherence among national regulatory systems by, for instance, requiring our trade partners to establish central authorities to coordinate and evaluate regulations and to provide sufficiently long comment periods for stakeholders to provide input on proposed regulations. And it could create mechanisms—like our current regulatory cooperation council with Canada—that bring countries together to eliminate unnecessary regulatory differences and assure the regulators are on the same page in evaluating emerging areas like nanotechnology.

*Third, the TPP—together with other U.S. trade initiatives—could help America maximize its leverage in the vital contest to shape global trade rules for the 21<sup>st</sup> Century.*

The World Trade Organization's decade-long effort to write new global trade rules is—in the words of *The Wizard of Oz*—not merely dead, but really most sincerely dead. With the demise of Doha, countries and blocs are now locked in a serious and important competition to define international trade norms for the 21<sup>st</sup> Century.

A number of countries, including leading developing countries, often favor weaker rules that would lock in their current markets and perpetuate a wide range of barriers to foreign trade and investment. These countries seek to advance this vision through weak regional trade deals (which often exclude key products and important issues like services and intellectual property), as well as national policies that favor their state-owned companies, force the transfer of valuable intellectual property, or require local content or operations. India, for example, increasingly appears to be the latest practitioner of this approach.

A trade future based on growing acceptance of these norms would put America's competitive and innovative producers and workers at a serious disadvantage in key global markets.

The TPP could provide the United States with a powerful platform to push back and advance an alternative vision that stresses open, transparent, and fairer trade. When combined with the Transatlantic Trade and Investment Partnership (T-TIP) that America is negotiating with the European Union, the TPP could enable the United States to team with a growing coalition of like-minded and economically powerful countries in the Pacific, North America, and Europe. While America certainly has any number of differences with these countries, we generally share a broad commitment to enforcing and enacting comprehensive and high-standard rules for global trade.

Other countries are concerned about being left out of the TPP—additional Latin American and Asian countries have expressed interest in linking up with the United

States and its TPP partners. Even China has announced recently that it is studying the possibility of joining the TPP. While China is undoubtedly many years away from meeting the high level of ambition that the TPP would require, its apparent interest in a U.S.-led TPP is a stark illustration of the pivotal role and considerable influence that a strong TPP could potentially give the United States in writing new rules for global trade.

### **Key Trends in the 21<sup>st</sup> Century Global Economy**

As you analyze the TPP, it's also important to keep in mind the new realities of the 21<sup>st</sup> Century economy. Too often, when we discuss trade agreements, it's tempting for many of us—supporters and opponents alike—to simply dust off old talking points about trade. But, if we do this, we'll miss some important recent trends that could strongly influence 21<sup>st</sup> Century trade, especially U.S. trade prospects in the Asia-Pacific region.

There are three trends that merit your particular attention:

*First, there has been a surge in new trade deals among countries in Asia.*

In the last decade, the number of trade deals among Asian countries has exploded from three to over 50, and some 80 new deals are being negotiated. These include a pending megadeal—called the Regional Comprehensive Economic Partnership or RCEP—that would tie together 16 countries, including China, India, Japan, Korea, and the 10 ASEAN nations.

As these countries eliminate barriers to trade with each other, existing duties and barriers to U.S. exports will loom even larger. This, in turn, will sap the competitiveness of America's manufacturers, farmers, and service providers in these vital markets and cause them to lose both current and potential business opportunities. The USDA has forecast, for example, that new trade deals that the ASEAN countries have cut with China, Australia, and New Zealand will reduce U.S. fruit and processed food exports by some \$350 million.

*Second, America's share of trade into key Asian markets has plummeted.*

Between 2000 and 2010, America's share of exports to 15 key East Asian markets countries plummeted by over 42 percent. None of our major competitors in the region lost market share at anywhere close to this rate. (Japan had the next greatest loss, at 23 percent.) Meanwhile, during this same period, China and Korea grew their regional market shares by some 14 percent.

While there are a number of reasons for this sharp decline in America's market share, the fact that America currently has only three market-opening trade deals in the region is likely a key reason for this alarming trend. And if this trend continues, America would, according to estimates by Third Way, leave hundreds of billions of dollars in potential exports and millions of good jobs on the table for our global competitors to grab. On the other hand, restoring America's share of major regional

markets to past levels would—in the year 2020 alone—increase U.S. goods exports by an estimated \$600 billion and support over three million jobs.

*Third, countries increasingly make things together.*

A recent landmark study by the OECD and WTO underscored the fact that products that are labeled as “made in” a particular country most often contain significant content from a variety of countries. The study especially highlighted the particularly close integration of the U.S., Canadian, and Mexican economies in making things together. It revealed, for example, that U.S. content accounts for \$1 of every \$5 of Mexico’s global electrical exports and \$1 for every \$6 of Canada’s global exports of transport equipment. Another study estimates that American content accounts for 40 percent of Mexico’s U.S.-bound exports and 25 percent of Canada’s exports to the United States. (China’s U.S.-bound exports, on the other hand, contain only four percent U.S. content.)

This new research highlights the importance of assuring that America gets a robust share of the business of globally produced products. It shows how closely integrated trading partners can serve as export platforms for American goods and services—as well as input suppliers for products made in America by American workers.

This research also underscores why it’s especially important that trade agreements like the TPP better facilitate trade flows—through clear, common rules of origin, increasing the efficiency of customs processing, and other measures—to assure that America has greater access to opportunities in global supply chains.

#### **What Makes a Good TPP?**

As you and your colleagues evaluate the TPP, you’ll no doubt receive detailed advice on specific issues, chapters, and provisions and their effects on various sectors of the American economy. As someone who’s looked at the prospects for a TPP more generally, I’d like to offer four broader tests for assessing whether the TPP is a good deal for the United States:

*First, is it comprehensive?*

Many of America’s trading partners play only a few notes in international trade, relying on their competitive advantage in a limited group of resources, products, or services.

The United States, on the other hand, plays a virtual symphony. Our producers, investors, and exporters are global leaders in consumer goods, transport equipment, and industrial machinery; farm commodities and processed foods; financial services, health care, and express deliveries; movies and innovative software; and a whole host of other products and services.

As a consequence, America does best when our trade deals are truly comprehensive; we have consistently insisted on trade agreements that broadly open markets for all goods, services, and investment and apply core trade rules to all signatories.

But achieving a comprehensive TPP will not be easy. Our negotiators, for instance, face strong pressures to exclude or significantly water down coverage of sensitive domestic sectors that are important to our TPP partners, like dairy, sugar, and apparel. However, excluding these sectors and others would quickly lead our negotiating partners to respond in kind, by excluding sectors that are important to American exporters, such as insurance and farm products in Japan. This, in turn, could lead to a downward spiral that would result in a seriously weakened TPP that would fail to deliver significant benefits to the United States.

*Second, does it embody high standards?*

The sophisticated nature of America's trade and investment also means that we benefit most from trade deals that are not only broad, but also deep—agreements that include high standards on key issues.

An effective TPP must, for instance, build on existing WTO rules by establishing new requirements to assure that technical and farm standards are developed and applied in a fairer, more transparent, and more certain manner. It must facilitate regional trade and supply chains by assuring greater transparency, certainty, simplicity, and speed in customs operations. It should provide American investors with substantive legal protections and access to fair dispute resolution, while assuring the rights of countries to regulate in the public interest. And, because most American exports are based on some facet of intellectual property, it should include strong rules against infringement, piracy, and counterfeit products; strong IP protections for medicines and biotechnology products; and effective enforcement provisions.

*Third, is it built to grow?*

America's 11 current TPP negotiating partners together form a very significant market—one that accounts for a combined \$12 trillion in annual GDP and over 45 percent of America's exports of goods. Employing the TPP to streamline trade and knock down remaining barriers among these countries has the potential to open significant new opportunities for American manufacturers, farmers, and service providers in these key markets.

Studies by the Peterson Institute and others emphasize that even greater potential benefit for the United States lies in a broader, comprehensive, high-standard Asia-Pacific trade deal that spans the entire region, including Korea, the ASEAN nations, Latin America, and, eventually, even China and India.

It is vital, therefore, that the TPP include mechanisms for efficiently adding other nations to a growing TPP, while assuring that the TPP remains comprehensive and high-standard. Additionally, it's important that the TPP establish programs that will



drive continuing, further progress on key issues like trade facilitation, technical and farm standards, and regulatory coherence, and that it provide procedures and forums for addressing emerging trade issues.

*Fourth, does it reflect American values?*

For all their complexity, America's modern trade agreements can often be an exercise in promoting basic American values in the context of international trade. In chapter after chapter, these trade agreements contain detailed rules and requirements that promote such principles as openness and transparency, nondiscrimination, notice and comment, and due process. A successful TPP will maximize the spread of these vital values.

The TPP also provides the United States with the opportunity to extend strong, enforceable rules on labor and the environment to additional trading partners and to highlight the importance of these issues in global trade. (Interestingly, it also offers the opportunity to strengthen our NAFTA-era understandings with Canada and Mexico.) It is important for the United States to lead in this regard, since many of our global competitors ignore these critical issues in their own trade deals. China, for instance, recently took labor and environmental issues off the table in its new trade negotiations with Korea and Japan.

#### **The TPP and a Comprehensive U.S. Strategy for Global Trade**

Finally, for America to prosper in the 21<sup>st</sup> Century economy, it is vital that trade agreements like the TPP be part of an overall, comprehensive approach to America's global competitiveness.

America must aggressively enforce existing trade rules to assure a level playing field for our producers and workers. We must fund modern infrastructure, promote policies that assure our continued leadership in innovation, and provide training and—when needed—adjustment assistance so that our workers are prepared to succeed in an increasingly competitive global economy. And—especially in an era of seemingly random sequesters—we need to provide our dedicated trade officials in Washington and around the world with the resources they need to continue to open doors and break down barriers for America's producers and workers and their exports.

#### **Conclusion**

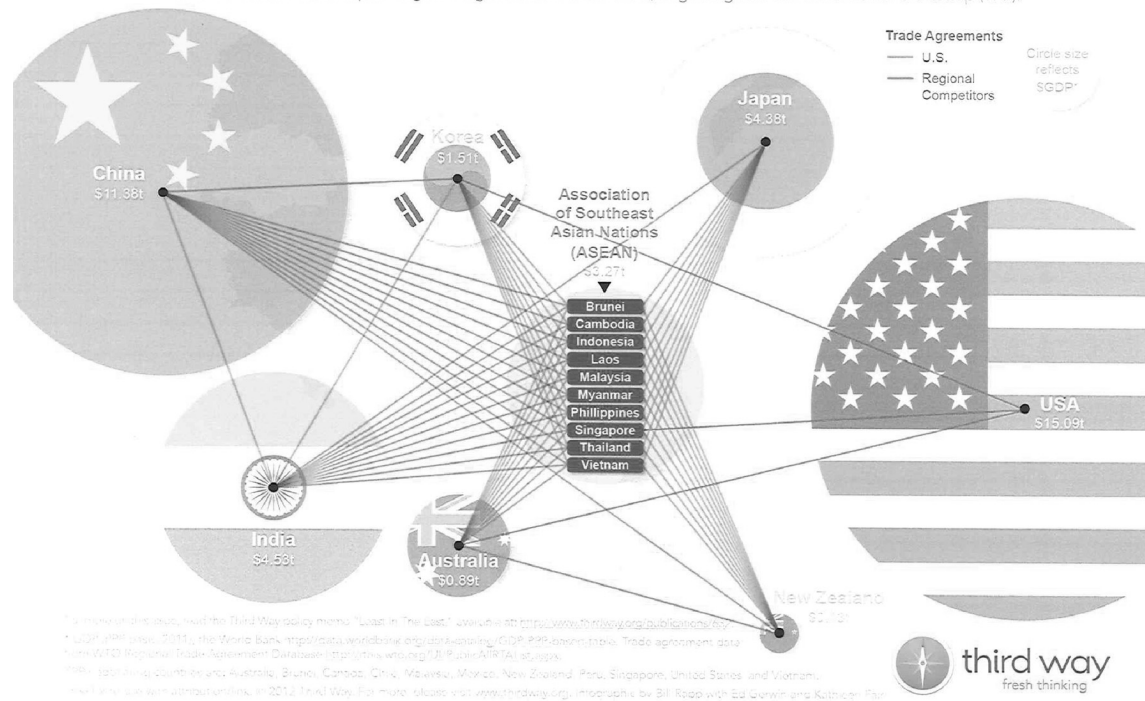
Thank you, again, for the opportunity to testify today.

I believe that a comprehensive, high-standard TPP would have great potential to boost American growth and exports, support good jobs for our workers, and advance global trade rules that reflect America's priorities and values.

I look forward to working with you and your colleagues as you evaluate the TPP.

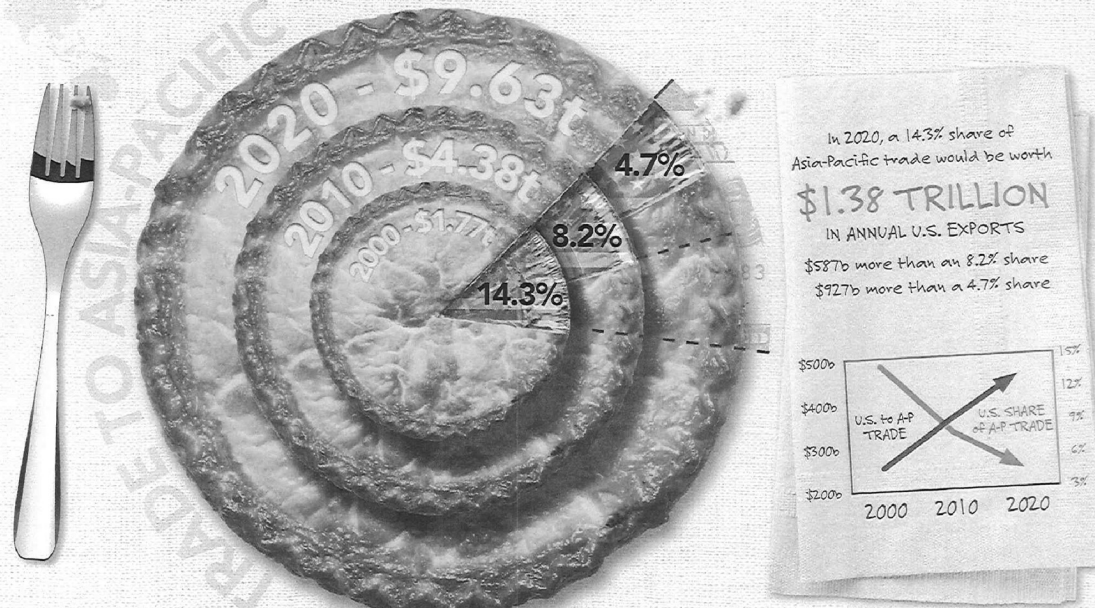
## LINKED IN: TRADE NETWORKING IN THE ASIA PACIFIC

Over the past decade, America's share of trade to Asia-Pacific markets has declined more than any of our regional competitors, who have become more closely linked by a growing network of trade agreements. To regain our competitive edge in these increasingly lucrative markets, America is pursuing new high-standard trade deals, beginning with the TransPacific Partnership (TPP).



# AMERICA'S SHRINKING SLICE

From 2000 to 2010, America's share of imports into 12 leading Asia-Pacific markets has dropped by 43%. At that rate, by 2020 America would be leaving almost a trillion dollars in exports to this fast-growing region on the table... annually.



From the Third Way report "Boatloads of Growth: Recapturing America's Share of Asia-Pacific Trade," available at: <http://www.thirdway.org/publications/536>.  
 All values and calculations in constant 2010 dollars. Trade in goods only (no services). Based on data from 12 leading Asia-Pacific trade markets: China, Japan, Hong Kong, Korea, India, Singapore, Australia, Thailand, Malaysia, Indonesia, Philippines, and New Zealand. Historical data: UN Commodity Trade Statistics Database. Projections based on UN data and IMF "World Economic Outlook" forecasts, April 2012.  
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Mr. POE. I thank the gentleman.  
Mr. Metalitz, 5 minutes.

**STATEMENT OF MR. STEVEN METALITZ, COUNSEL,  
INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE**

Mr. METALITZ. Thank you very much, Chairman Poe, Ranking Member Sherman, members of the subcommittee. I appreciate this chance to present the views of the International Intellectual Property Alliance on progress toward the TPP agreement.

IIPA represents the U.S. copyright-based industries that contribute so much to our nation's economic health, international competitiveness, and to good, U.S. jobs. A strong TPP has enormous potential to open up important foreign markets to the copyrighted products and services that are the fruit of American creativity, ingenuity, and talent. Recently, that potential dramatically expanded as three of our four largest trading partners came to the TPP table. But these gains can only be achieved if the TPP embodies both high standards of copyright protection and enforcement and strong compliance mechanisms to ensure that our trading partners deliver on their obligations.

Businesses and consumers around the world have demonstrated an insatiable appetite for U.S. books, music, movies, software applications, and other copyrighted works. But our industries still encounter many barriers overseas, most notably pervasive piracy. Piracy of U.S. works makes it difficult for legitimate distributors to gain a foothold in overseas markets and when those distribution channels do get established, piracy online or offline stunts their growth. This explains why it has been a cornerstone of U.S. trade policy for more than two decades under both Republican and Democratic administrations and with strong and consistent bipartisan support from Congress to get our trading partners to ensure the adequacy of their copyright laws and their regimes for enforcing those laws.

Free trade agreements are a powerful tool for advancing this goal.

The Korea FTA, approved last Congress, exemplifies this effort. It includes a state-of-the-art copyright chapter that we have urged U.S. negotiators to employ as a benchmark in the TPP. Even in those TPP partners that have relatively modern copyright laws, there are important and in some cases long-standing gaps that hamper our industry's ability to fully compete in those markets. TPP offers the potential to resolve some of these problems.

My written testimony gives several examples. I will just mention a few. We want the TPP partners to harmonize the term of protection of copyright, rather than simply meeting the minimum requirements in that area. We want them to enforce strong, legal protections for technological measures that right-holders use to protect their works, including meaningful remedies against trafficking in tools and services aimed at circumventing these controls. These technologies are absolutely essential to cloud computing services and to a lot of new ways of delivering copyrighted materials to the public. These governments should set a strong example by ensuring that their public sector uses only legal and licensed software. They should enact and implement deterrent civil and criminal remedies

to copyright infringement and they should choke off the main supply channel for online movie piracy by specifically outlawing unauthorized camcording of films in theaters. This has been shown to be very effective everywhere it has been done.

These issues are complex and we know that negotiating them with such a large group of major trading partners is especially challenging. The U.S. negotiators have worked hard and with unstinting dedication and our industries are committed to doing whatever we can to enable them to bring back a high standard TPP agreement with an exemplary copyright chapter. That outcome is critical not only to the continued growth of the U.S. copyright industries, and thus of the U.S. economy as a whole, but also to bolstering innovation, the healthy growth of the internet, and free expression.

Our industries are proud of their role in providing more creative works to more people in more ways at more price points and on more devices than ever before in human history. A TPP that builds on KORUS FTA will help spread this creativity and innovation benefitting the citizens of all the TPP partner countries.

Finally, the ultimate outcome of the TPP depends on a vigorous, prompt, and consistent compliance effort. Concluding a successful TPP agreement is only the first chapter. The rest of the story will be written in the legislatures, ministries, and market places of our trading partners. The U.S. Government needs to redouble its efforts and its commitment of personnel, intellectual bandwidth, and other resources to proactively enforcing our trade agreements including what the IIPA hopes will be a strong and comprehensive copyright chapter in the TPP.

Thank you again for inviting me and I welcome your questions.  
[The prepared statement of Mr. Metalitz follows:]

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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Written Testimony of

Steven J. Metalitz

Counsel, International Intellectual Property Alliance

Before the

House Committee on Foreign Affairs  
Subcommittee on Terrorism, Non-proliferation and Trade

August 1, 2013

Hearing on

“The Trans-Pacific Partnership: Outlook and Opportunities”

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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Thank you for this opportunity to present the views of the International Intellectual Property Alliance (IIPA) on progress toward a Trans-Pacific Partnership Agreement (TPP).

IIPA represents the U.S. copyright-based industries that seek to open up foreign markets closed by piracy and other market access barriers. We are a coalition of seven trade associations, representing over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world. For nearly 30 years, this coalition has worked to ensure that U.S. trade policy fully reflects the importance of copyright-based industries to the U.S. economy, jobs and international competitiveness. Members of the IIPA include the Association of American Publishers (AAP); BSA | The Software Alliance; Entertainment Software Association (ESA); Independent Film & Television Alliance (IFTA); Motion Picture Association of America (MPAA); National Music Publishers' Association (NMPA); and Recording Industry Association of America (RIAA).

Over the past five years, IIPA has followed closely and with great interest the progress toward a TPP agreement. Such an agreement has enormous potential to open up important foreign markets to the products and services that are the fruit of American creativity, ingenuity, and talent. Opening up these markets can mean more and better U.S. jobs for men and women involved in creating, marketing, distributing and disseminating these works. But these gains can only be achieved if the TPP embodies both high standards of copyright protection and enforcement, and strong compliance mechanisms to ensure that our trading partners deliver on their obligations.

It is well established that industries dependent on copyright protection are critical to our country's economic health, to our international competitiveness, and to a growing and more highly skilled U.S. workforce. A long series of economic studies commissioned by IIPA has quantified this conclusion, using well-accepted methodologies endorsed by the World Intellectual Property Organization and employed in similar studies across the globe. The most recent IIPA study, released two years ago, found that the "core" copyright industries – those primarily engaged in creating, producing, distributing or exhibiting copyrighted works – accounted for over 6.3% of U.S. GDP in 2010, or more than \$930 billion in economic activity. These industries provided nearly 5.1 million U.S. jobs, or 4.75% of the entire U.S. private sector workforce; and those jobs paid, on average, 27% more than the overall workforce average. The latest edition of the study is in preparation, and we are confident that when it is released later this year, it will once again show how critical the copyright industries are to the American economy and to good U.S. jobs. The basic conclusions of these studies are also consistent with those from many other sources, including the comprehensive study of U.S. intellectual property-intensive industries released last year by the U.S. Department of Commerce.

These economic studies also underscore the growing importance of international trade to the copyright sector, and therefore to the economy as a whole. The most recent IIPA study

concluded that, in 2010, the core copyright industries collectively are responsible for foreign sales and exports of \$134 billion, well exceeding the corresponding figures for major industry sectors such as automobiles, agricultural products, food or pharmaceuticals. Businesses and consumers around the world have demonstrated an insatiable appetite for U.S. books, movies, music, and software applications, both for business uses and for entertainment and games.

Those foreign sales figures would be even larger were it not for the barriers that our industries encounter in many overseas markets. One of the most virulent and troubling of these barriers is pervasive piracy of copyrighted materials of all kinds. The widespread availability, both in physical marketplaces and in the online environment, of unauthorized, illicit copies of U.S. works makes it difficult for legitimate distributors to gain a foothold in overseas markets; and even where there are well-established legitimate distribution channels, their growth is inevitably stunted when they must compete with pirates who pay nothing for the content they distribute or make available, who flout local rules and requirements with which legitimate market entrants must comply, and who pay no taxes on their ill-gotten gains.

These facts underscore why the U.S. has long included strong copyright rules and enforcement obligations within our agreements with major trading partners, and why building on that progress is so critical. Because trade in copyrighted materials is vital to U.S. economic interests, and because piracy in overseas markets is a major obstacle to growth of that trade, it must be a top priority to get our trading partners to ensure the adequacy of their copyright laws and their regimes for enforcing those laws. This has been a cornerstone of U.S. trade policy for more than two decades, under both Republican and Democratic Administrations, and with strong and consistent bipartisan support from Congress. This policy has helped to grow our economy, support millions of U.S. jobs, nurture our creative spark, and, not incidentally, foster the growth of the copyright sectors within our trading partners, thus building a global constituency for copyright protection and enforcement. The KORUS FTA, which was approved last Congress, was in many ways the culmination of this effort. It includes a state-of-the-art copyright chapter that we have urged U.S. negotiators to employ as a benchmark in the TPP.

A TPP agreement provides an important opportunity to build upon this long-standing policy. Four of the seven trading partners with whom the initiative was originally launched have already signed bilateral Free Trade Agreements with the United States, and all of those FTAs – with Australia, Chile, Peru and Singapore – included strong intellectual property chapters with meaningful copyright provisions. A successful TPP will build on and extend these achievements, by bringing the copyright law and enforcement regimes of countries like New Zealand, Vietnam, Brunei and Malaysia into compliance with these best practices.

In recent months, three of our country's four largest trading partners – Canada, Mexico and Japan – have joined the TPP negotiations, thus dramatically expanding its importance. Each of these countries is a critically important export market for the U.S. copyright industries; and each has a relatively modern copyright law. Yet in each of these countries there are also important and in some cases long-standing gaps, either in legal protections under copyright or in enforcement standards (or both), which hamper our industries' ability to fully compete in these markets. Their engagement in TPP offers the potential to resolve some of these problems. Moreover, the TPP countries hope that other nations will join the finished agreement. It is critical that we get it right.



Let me offer a few examples of the kinds of specific improvements in the laws and enforcement practices of our trading partners that IIPA hopes will be achieved in the TPP negotiations. In each of these areas, the status quo falls short of meeting the current global norms, as embodied in KORUS FTA and other instruments, in ways that are damaging to U.S. copyright industries. Of course it is not possible here to provide a comprehensive list, but the following may hit some of the high points.

Term of Copyright Protection. Over the past couple of decades, most major economies have moved to extend the term of copyright protection beyond the minimum levels required by the WTO TRIPS Agreement, to reflect longer life-spans and the need to maintain incentives for investment in the conservation and dissemination of older works. Many TPP partners have extended term for at least some types of works, but there are some important outliers, notably Canada, New Zealand, and Japan (other than for films). Greater harmonization of term will facilitate international commerce by minimizing the friction that occurs when a work is still under copyright protection in one country but not in another. The TPP agreement should commit all participants to adhere to the evolving global norm of longer terms.

Technological Protection Measures. The Internet has opened up new and exciting ways of delivering content to consumers, using a variety of business models and price points. The viability of these innovative means of delivery – notably including cloud computing services – depends directly on the ability to use technology to manage access to these services and the underlying content. For this reason, strong legal protections for technological measures employed by rights holders to protect their works, and meaningful civil and criminal remedies against trafficking in tools or services aimed at circumventing these technological controls, are critical features of all 21st century copyright laws. While those TPP partners that have recently entered into FTAs with the U.S. have taken on (and in most cases implemented) detailed obligations in this field, the other partners generally have not, and in a number of cases there are significant gaps to be filled. Few improvements are more critical to growing international digital marketplaces for copyrighted materials in the years ahead.

Government Legalization. Governments are among the world's biggest consumers of software, but problems persist with high levels of unlicensed software use by government agencies. The KORUS FTA and other U.S. trade agreements impose obligations on governments to ensure that their software use is legal. The TPP should build on and strengthen these obligations on government legalization programs, both to ensure legal software use in the public sector and to encourage governments to set a strong example for the private sector on the need to address IP infringement and implement best practices in IT management.

Civil and Criminal Remedies. To provide the right incentives for creation and dissemination of works within the economies of all our TPP partners, their enforcement regimes must also be strong, comprehensive and up-to-date, and they must deliver fully compensatory and deterrent remedies. Among other requirements, TPP should address:

Pre-set (Statutory) Damages. Traditional formulations for calculating civil compensatory damages for copyright infringement too often fall short of deterrent levels. This is not a theoretical problem: in many markets, very low damages awards allow infringers to treat liability (if one gets caught) as simply a cost of doing business. A key

element of solving this problem is to establish pre-set damage levels that can be chosen by right holders in lieu of proving actual damages. Such a regime provides needed deterrence, and responds effectively to scenarios (such as illicit Internet uploading and streaming) in which calculation of actual damages is extremely difficult. While statutory damages are a well-established feature of U.S. law, most of our TPP partners do not yet provide this important enforcement tool.

Camcording. The great majority of pirate movies distributed via the Internet are sourced to cinemas where high-quality digital copies are surreptitiously recorded off the screen, usually in the first few days of theatrical release. While technically this constitutes copyright infringement, few countries have effectively combatted illicit camcording without putting a specific law on the books against it. Experience has demonstrated that when specific anti-camcording laws are enacted and are vigorously enforced, they are extraordinarily effective in choking off this supply channel for Internet audio-visual pirates. As many of our current FTAs predate the proliferation of high-quality camcording, this gap remains to be filled among several of our TPP partners, although important markets such as Japan, Canada and Malaysia are already largely in compliance.

Criminal Remedies. Piracy remains a big business; but the Internet has brought with it high-volume piracy operations in which money does not directly change hands between supplier and customer. There is also the pervasive problem of enterprises that gain commercial benefit from using unlicensed software and other copyright products to conduct their business. It is thus essential that criminal remedies be available for all piracy carried out "on a commercial scale," whether for direct or indirect commercial benefit, as defined in part by the volume of infringement. This is particularly important in the many TPP countries in which the civil courts are unlikely to be effective in imposing deterrent remedies.

Other important copyright issues at play in the TPP negotiations include providing a strong framework for enforcement against online piracy, including effective incentives for cooperation among all participants in the digital networked environment, as well as ensuring that exceptions and limitations to copyright protection conform to well-established international norms.

The issues summarized above are technically complex, and we recognize that negotiations on these issues with such a large group of major trading partners is challenging. While we appreciate the challenges that U.S. negotiators face, and are grateful to them for their hard work and unstinting dedication, the end goal for our industries remains the same: negotiation of a high standard agreement that provides for strong protections and enforcement of copyrighted products and services.

Despite some claims to the contrary, strong copyright protection and enforcement is critical to bolstering innovation, the growth of the Internet and free expression. The copyright industries represented by IIPA depend upon freedom of speech, which is the lifeblood of creators everywhere. As the Supreme Court has acknowledged, "copyright is the engine of free expression." Companies that are members of IIPA's associations are also at the forefront of

innovation in the delivery of content – providing more creative works to more people in more ways at more price points and on more devices than ever before in human history. U.S. copyright law has made a huge contribution to achieving this result; and a TPP that adopts provisions similar to prior U.S. FTAs such as KORUS – which are fully consistent with U.S. law – will help spread this creativity and innovation throughout TPP markets.

Finally, it is important to note that while my remarks today have focused on the copyright elements of the TPP given the focus of IIPA's work, many other aspects of the agreement are critically important to allowing U.S. copyright industry companies to access and compete in TPP markets. Among other features, TPP must provide non-discriminatory market access for companies, products and services, including provisions to enable cross-border data flows and prohibit local server requirements. Addressing these issues, along with strong copyright protection and enforcement, is key to the success of this agreement for the copyright industries.

Whatever emerges from the TPP process, a good outcome will depend on a vigorous, prompt and consistent compliance effort. While most of our trading partners have done a good job of living up to the commitments they have made in previous FTAs to upgrade their copyright law and enforcement regimes, some have not. Realistically we must anticipate that concluding a successful TPP agreement is only the first chapter, and the rest of the story will be written in the legislatures, ministries and marketplaces of our trading partners, where these critical commitments must bear fruit. The U.S. government needs to redouble its efforts, and its commitment of personnel, intellectual bandwidth, and other resources, to the proactive enforcement of our trade agreements, including what IIPA hopes will be a strong and comprehensive copyright chapter in the TPP.

Mr. POE. I thank the gentlemen.  
Mr. Shehata, 5 minutes.

**STATEMENT OF MR. AMGAD SHEHATA, VICE PRESIDENT,  
INTERNATIONAL PUBLIC AFFAIRS, UNITED PARCEL SERVICE**

Mr. SHEHATA. Chairman Poe, thank you, and Ranking Member Sherman, members of the subcommittee. Thank you for the opportunity to testify on the Trans-Pacific Partnership agreement and its effects on the U.S. economy. I am testifying today on behalf of UPS and our nearly 400,000 employees working in the United States and around the globe.

In 1906, an enterprising 19-year-old, Jim Casey, borrowed \$100 from a friend and established American Messenger Company in Seattle, Washington. A lot has changed in 100 years. The American Messenger Company became United Parcel Service which eventually grew into the world's largest package delivery and logistics company. Today, UPS operates in 220 countries and territories with a fleet of 100,000 vehicles and is one of the world's largest airlines.

We handle more than 6 percent of the U.S. GDP and 2 percent of the global GDP every day.

With 95 percent of the world's consumers living outside of the United States, new trade agreements like the Trans-Pacific Partnership are critical to providing U.S. businesses greater access to the global marketplace. The TPP's agreements are important to the global economy, stems from its recognition of some of the fastest-growing regions in the world. With Japan's recent entry into the negotiations, alongside the likes of Singapore, Vietnam, and Malaysia, a successful TPP would be the most commercially significant free trade agreement ever negotiated; as we heard earlier, representing a third of the world's trade and 40 percent of global GDP, strategically integrating American supply chains with the Asia-Pacific.

UPS's goals within the TPP. Free trade agreements such as the TPP offer real, tangible benefits to UPS and our customers. As a global transportation company, UPS is expected to benefit greatly from the growth in trade. In our experience, with every new FTA, UPS's export volume to that particular market increases on average over 20 percent in the first year. Of course, it is not enough to fill planes with goods if one cannot quickly get shipments to customers, freely establish as a foreign company, hire your own people or confidently invest in these foreign markets. In many of these markets we face a highly regulated transportation sector, complex board of procedures, and incoherent domestic regulations which effectively prevent us from providing the best and most competitive services to our customers.

Through the TPP, we expect to secure critical commitments on market access, customs and trade facilitation, and regulatory disciplines which will allow us to compete on a level playing field. We operate in the new reality where businesses are linked together through a web of interconnected, predictable, and efficient supply chains. Inputs come from all over the world and are shipped to create products with the greatest values for consumers here in the U.S. or for eventual export. In order to enable these supply chains,

UPS seeks strong commitments on customs and trade facilitation for express shipments including a competitive de minimis as well as electronic pre-clearance and guaranteed time release. Measures such as these are the basic building blocks of a modern and fluid trading regime. And best of all, these improvements and efficiency and regulatory coherence do not have to compromise the supply chain security. And in fact, can improve by leveraging new technological advancements.

In conclusion, exporting to new markets continues to be the lifeblood of growth for the American economy and services are the central nervous system on which U.S. businesses rely, particularly SMEs. These businesses cannot penetrate foreign markets without support of a competitive and fluid supply chain. They must have free access to foreign markets and nondiscriminatory treatment within those markets. Given the TPP's ambition for market access and setting a global gold standard, it is timely for this subcommittee to be holding its hearing today. At this critical point in global economic recovery, it is imperative that the U.S. continue to demonstrate its leadership in advancing a global trade agenda. We must oppose demands to accept protectionism. We cannot afford to turn the clock back on international trade, particularly the growing Trans-Pacific market.

After the 18th round of negotiations this month in Malaysia, we are enthused by the vigor with which the U.S. and all other parties are attempting to close open items within the remaining chapters and successfully conclude negotiations this year.

Thank you again for your attention and your ability to focus on this very important issue. A comprehensive and commercially meaningful TPP is of vital importance to the expansion and prosperity of America's economy. Thank you.

[The prepared statement of Mr. Shehata follows:]

Written Testimony of Mr. Amgad Shehata  
Vice President, UPS International Public Affairs  
Before the  
United States House of Representatives  
Committee on Foreign Affairs  
Terrorism, Nonproliferation, and Trade Subcommittee  
The Trans-Pacific Partnership: Outlook and Opportunities  
August 1, 2013

Chairman Poe, Ranking Member Sherman, Members of the Subcommittee, thank you for the opportunity to testify on the benefits of the Trans-Pacific Partnership (TPP) agreement to the U.S. economy.

I am testifying today on behalf of UPS and our nearly 400,000 employees working in the United States and around the globe. In 1907 an enterprising 19-year-old, Jim Casey, borrowed \$100 from a friend and established the American Messenger Company in Seattle, Washington. Messengers ran errands and delivered packages in response to telephone calls received at their basement headquarters. They made most deliveries on foot and used bicycles for longer trips.

A lot has changed in the 100 years since. The American Messenger Company became United Parcel Service, which eventually grew into the world's largest package delivery company. Today, UPS is a global leader in logistics offering a broad range of solutions including the transportation of packages and freight; the facilitation of international trade and the deployment of advanced technology to more efficiently manage the world of business. UPS operates in 220 countries and territories with a fleet of nearly 100,000 vehicles. UPS handles more than 6% of the U.S. GDP and 2% of the global GDP every day. And, while UPS operates the 7<sup>th</sup> largest airline in the United States, we still make some deliveries by bicycle in places around the globe.

There is little doubt that the flourishing of cross-border commerce -- first throughout the United States and then in foreign markets -- facilitated the growth of UPS from its humble beginnings. Indeed, the creation of new trade lanes and elimination of trade barriers has allowed UPS to become what it is today - a global transportation network with a global workforce, servicing the global needs of our customers.

In today's economy, however, growth has been stagnating, both in the U.S. and globally. One of the fastest ways to stimulate a weak economy is through international trade. Trade promotes economic development which, in turn, creates jobs. In fact, international trade currently supports approximately 38 million American jobs.

With 95% of the world's consumers living outside of the United States, new trade

agreements like the Trans-Pacific Partnership are critical to providing U.S. businesses greater access to the global marketplace.

The TPP agreement's importance to the global economy stems from its recognition of some of the fastest growing regions in the world. With Japan's recent entry into the negotiations alongside the likes of Singapore, Vietnam, and Malaysia, a successful TPP would be the most commercially significant Free Trade Agreement (FTA) ever negotiated, representing a third of the world's trade and 40% of global GDP, strategically integrating North American supply chains with the Asia Pacific.

Through this agreement, the U.S. seeks to boost U.S. economic growth, double U.S. exports, and support the creation and retention of U.S. high-quality jobs. The U.S. also hopes to capture new disciplines for 21st century trade issues such as cloud-computing, competitiveness, state-owned and state-sponsored enterprises, regulatory coherence, labor, and environmental impacts.

#### **UPS's Goals for the TPP**

Free trade agreements such as the TPP offer real, tangible benefits to UPS and our customers. As a global transportation company, UPS is expected to benefit greatly from the growth in trade. In our experience, with every new FTA, UPS's export volume to a particular market increases on average over 20% in the first year. We expect the regional free trade agreement of twelve economies representing a third of global trade to generate up to \$78 billion in exports for the United States alone by 2025 (Peterson Institute study, 2012). This additional volume will allow us to more efficiently utilize cargo capacity which will in turn allow us to be more globally competitive.

Of course, it's not enough to fill planes with goods if one cannot quickly get shipments to customers, freely establish as a foreign company, hire your own people or confidently invest in these countries. In foreign markets, we face a highly regulated transportation sector, complex border procedures, and incoherent domestic regulations which effectively prevent us from providing the best and most competitive service to our customers. Through the TPP, we expect to secure critical commitments on market access, customs & trade facilitation, and regulatory disciplines which will allow us to compete on a level playing field. Through the TPP, we also hope to put in place mechanisms to address gaps in trade policy that have the effect of distorting or disadvantaging supply chains. All too often, US companies face challenges in foreign markets requiring synchronicity of multiple agencies to address issues. We see this increasingly in the healthcare space where health regulation, logistics, and even tax policy are starting to intersect. And because the TPP is expected to be a template for future markets in the Asia Pacific to join, it is more important than ever to address these issues today.

In today's global economy, businesses are linked together through a web of interconnected, predictable, and efficient supply chains. Inputs come from all over the world to create products with the greatest value for the consumer here in the US or for eventual export. Limiting cross-border friction will boost the global competitiveness of U.S. businesses and reduce costs across our highly-integrated operations. And best of all, these improvements in efficiency and regulatory coherence do not have to compromise supply chain security, and in fact can improve it by leveraging new technological advancements.

The most promising aspect of the TPP agreement is that, if realized, it will be a high standards agreement where minimal products or policies are excluded in the various sectors and trade is increased among all partner countries – all boats will rise.

**Conclusion**

Small businesses are the lifeblood of the American economy, and services are the central nervous system on which small businesses depend. SME's cannot penetrate foreign markets without the support of a competitive and fluid supply chain network. They must have free access to foreign markets and non-discriminatory treatment within those markets.

Given the TPP's ambition for market access and setting global gold standards, it is timely for the Subcommittee to be holding its hearing today. At this critical point in the global economic recovery, it is imperative that the U.S. continue to demonstrate leadership in advancing a global trade agenda. We must oppose demands to accept protectionism. We cannot afford to turn the clock back on international trade, particularly the growing Trans-Pacific market.

After the 18<sup>th</sup> round of negotiations this month in Malaysia, we are enthused by the vigor that the U.S. and all other parties are attempting to close open items within the remaining chapters and successfully conclude negotiations this year.

Thank you again, Chairman Poe and the Subcommittee, for giving attention to these issues of vital importance to the expansion and prosperity of America's economy through a comprehensive and commercially meaningful trade liberalization agreement.

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Mr. POE. I thank the gentleman.  
 Ms. Drake, you have 5 minutes.

**STATEMENT OF MS. CELESTE DRAKE, TRADE AND  
 GLOBALIZATION POLICY SPECIALIST, THE AMERICAN FED-  
 ERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGA-  
 NIZATIONS**

Ms. DRAKE. Chairman Poe, Ranking Member Sherman, members of the committee, good afternoon. I appreciate this opportunity to testify on behalf of the AFL-CIO on the outlook for the Trans-Pacific Partnership trade and globalization agreement. I have submitted written testimony for the record and will summarize my comments here.

American workers already live in a global, economic environment which includes deep trade ties with TPP partner countries, but those trade ties are severely unbalanced, particularly with Japan with which we have a trade deficit of more than \$76 billion, \$52 billion in autos alone. The AFL-CIO does not believe that more of the same trade policy that brought us NAFTA and the WTO is going to fix the problem. Those deals have cost America's workers nearly \$700,000 and 2.7 million jobs respectively. They have led to increasing trade deficits and flat wages. This model of trade liberalization is also contributing to a declining share of national income for workers even as their productivity rises. In other words, as workers help their employers make record profits, they aren't seeing rewards that are commensurate with their efforts. Entities as diverse as the Federal Reserve Board and the Economic Policy Institute have documented this trend. We can do better which is why seeing the potential of a new trade model in the TPP, the AFL-CIO has actively engaged with the administration, Members of Congress, negotiators from each TPP country, and a variety of international allies to engage in this process and try to shape the deal into one that promotes American interests and not just the interests of its global business sector.

Unfortunately, the publicly-available evidence has made us concerned that the TPP could repeat the mistakes of past trade policy which closed factories, sent jobs to overseas' sweatshops and failed to protect workers, small businesses, family farms, and even our national security. To attempt to address some of the shortcomings of past trade policy, the administration secured a preliminary deal with Japan in April, but the deal excluded a number of critical issues including concrete commitments on currency, auto parts, rules of origin, and labor rights.

American workers are not confident that the deal is strong enough to pry open Japan's closed markets or create a level playing field, particularly in the auto sector.

To promote the shared prosperity necessary to increase net exports and reduce our perennial trade deficit, we ask for your assistance in ensuring that the TPP charts a new course. It must include commercial terms that don't dilute Buy American policies or let foreign state-owned enterprises use subsidies to harm U.S. businesses or their workers. It must require reciprocal market access and strict rules of origin that promote jobs here or in TPP partner coun-

tries, but not in countries like China that have not made commitments to us.

In addition, all TPP countries must agree to enforce the ILO core labor rights which empower workers to seek improved wages, benefits, and working conditions. Enforcement measures when governments refuse to protect those rights must be at least as swift, effective, and meaningful and those for commercial violations. The TPP must not give foreign investors the right to bypass our courts to challenge American laws that they don't want to follow. Investment policies to protect our states, cities, and workers against companies seeking to thwart the people's will.

To really grow the American economy, the TPP must also require nations to uphold basic environmental standards, contain an effective mechanism to address currency manipulation which has been used by China, Japan, and South Korea to advantage their own exports, include banking and insurance rules that promote economic stability, ensure imports including food and toys are safe, ensure the rights of publicly-supplied services like electricity and water and contain intellectual property rules that support American innovation and the arts without making life-saving medicines unaffordable.

The TPP countries account for one third of global trade and 40 percent of global GDP and that is before additional countries joined, so we can't afford to get it wrong. To avoid a repeat of the mistakes of NAFTA, we encourage all members of this committee to review the developing TPP test. Your input could be vital to creating good jobs and fair opportunities for businesses in your district.

I thank the committee for its time and would be pleased to answer any questions.

[The prepared statement of Ms. Drake follows:]

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## BEFORE THE HOUSE TERRORISM, NONPROLIFERATION AND TRADE SUBCOMMITTEE

## OUTLOOK FOR THE TRANS-PACIFIC PARTNERSHIP TRADE & GLOBALIZATION AGREEMENT

**CELESTE DRAKE**  
THE AMERICAN FEDERATION OF LABOR &  
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

AUGUST 1, 2013

The American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), on behalf of its 57 affiliate unions, appreciates this opportunity to comment on the outlook for the Trans-Pacific Partnership Trade and Globalization Agreement (known as the TPP). The AFL-CIO has long recognized that workers everywhere live in a global economic environment. Trade and globalization are not a temporary trend; they are an economic reality. The key questions for workers, therefore, involve the rules that govern trade and globalization, who makes them, and who benefits from them. If working families' preferences play little or no role in shaping trade and globalization agreements, then it should surprise no one that such agreements harm instead of benefitting workers and their families.

Given its position as the first new trade and globalization agreement the Obama Administration has negotiated from scratch, the TPP is a particularly important agreement. Of course, much of the trade among the current TPP participants (Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) and the U.S. is already covered by trade and globalization agreements. But the TPP, unlike past trade agreements, is being specifically designed as an open-ended agreement and potential new entrants, including China and Thailand, are already being discussed. In that sense, it is especially important to re-examine our trade policy—as the rules set down in the TPP will govern a large portion of international trade in years to come.

As the Administration attempts to conclude the TPP by October of this year, the AFL-CIO strongly encourages Congress to increase its participation, consultation, and oversight roles with respect to this agreement. Though there is time for the agreement to solidify into one that pursues a people-centered agenda, what has been publicly discussed and reported does not warrant optimism.

The AFL-CIO has attempted to work with the Administration to implement specific changes to the prior U.S. trade and globalization model in such critical areas as labor, state-owned enterprises, rules of origin, government procurement, currency, investment (including a more comprehensive screen for inward bound foreign direct investment, or FDI), reciprocal market access, cross-border trade in services (including financial services), the environment, food safety and other public interest regulation, and intellectual property protections (including access to medicines).

To its credit, the United States Trade Representative (USTR) has been open and accessible. However, based on publicly available information, few, if any, of the detailed proposals we submitted have been translated into transformative changes in the still secret text. While negotiations continue, it appears most of the rules being considered in the TPP too closely follow the current trade model. If the TPP does indeed follow a similar path to that carved by NAFTA, the WTO, and the U.S.-Korea Trade and Globalization Agreement, it would be a tragic missed opportunity to strengthen our economy, reduce income inequality, and promote sustainable growth. The United States cannot afford another trade agreement that hollows out our manufacturing base and adds to our substantial trade deficit.

Unfortunately, it appears global firms that use the United States as a flag of convenience are once again substituting their interests for the national interest in TPP negotiations. Such firms seek to increase profits by pitting countries against one another in the quest to attract foreign investment by reducing labor, environmental, and other social costs. This is fundamentally at odds with the economic interests of the United States and its citizens, and in many cases also at odds with the interests of our trading partners, who seek rising living standards in their own countries.

The disproportionate voice of global corporations in the formation of U.S. trade and globalization policy has advanced deregulation, privatization, tax and other preferences for businesses, weakened worker bargaining power, and led to a dwindling social safety net. The results are clear: massive trade deficits, lost jobs, rising inequality, falling wages, and weakened democratic governance.<sup>1</sup>

Neither the USTR nor other federal agencies have *performed and published comprehensive economic evaluations* of the likely impacts of the TPP. As with prior trade agreements, this seems poised to happen only after the text is set in stone—too late to make changes to improve outcomes for workers. If America’s workers only learn of the TPP’s probable harm to particular industries and their employees or likelihood to increase our trade deficit after negotiations are complete, they miss opportunities to act to secure better outcomes. In addition, this failure to *perform and disseminate a comprehensive (and unbiased) economic analysis before negotiations conclude* leaves USTR (and the working families whose interests it is supposed to represent) at a disadvantage in negotiations. It is unclear how any trade agreement negotiated under this closed system can ever really maximize job creation or prevent permanent harm to workers.

Unfortunately, USTR’s approach, largely based on the neoclassical theory of comparative advantage, specialization, and mutual gains from trade, relies on a set of assumptions that do not accurately describe today’s global trading system (if indeed they ever did). In the 1990s, Ralph Gomory and William Baumol demonstrated how adversarial relationships, economies of scale,

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<sup>1</sup> For more information, see Robert E. Scott, “The China Trade Toll: Widespread Wage Suppression, 2 Million Jobs Lost in the U.S.,” EPI Working Paper, July 30, 2008 (wage suppression); Robert E. Scott, “The China Toll: Growing U.S. Trade Deficit with China Cost More than 2.7 Million Jobs between 2001 and 2011, with Job Losses in Every State,” EPI Briefing Paper #345, Aug. 23, 2012 (deficit and job loss); Mariama Williams, “Challenges Posed by BITs to Developing Countries,” in South Views No. 49, Dec. 11, 2012, and “Dangerous Weapons: How International Investment Rules Undermine Social and Environmental Justice,” Network for Justice in Global Investment, Aug. 20, 2012 (weakened democratic governance).

technological innovation, foreign direct investment, and indeed, even government policy undermine the predicted Ricardian outcome of mutual gains from trade.<sup>2</sup> Under today's globalized system, there are winners and losers, instead of winners and winners. It is the workers in the U.S. and in many of our trading partners who have been the losers—especially in the most recent decade, while global capital has taken an ever increasing share of the world's wealth.

America's workers have seen nearly 700,000 jobs displaced by growing trade deficits with our NAFTA partners and 2.7 million jobs (2.1 million in manufacturing alone) displaced due to trade with China since its accession to the WTO.<sup>3</sup> High and rising trade deficits sap our nation's economic strength, are a significant drag on economic growth and job creation, and have turned the U.S. into the world's largest debtor nation. The most recent example of this trend is the U.S.-Korea Trade and Globalization Agreement: in just its first year in force, the bilateral U.S. trade deficit with South Korea increased by \$5.8 billion, or nearly 40%, costing U.S. workers about 40,000 jobs at a time when we sorely need them.<sup>4</sup>

Meanwhile, workers in the territories of trade agreement partners Colombia, Guatemala, Honduras, Mexico, Bahrain, and Jordan, among others, have experienced varying levels of labor repression, including in some cases the detention, persecution, and murder of union and human rights activists. This repression has kept workers from sharing fairly in any gains from trade—and has seen global corporations keeping larger and larger shares of the gains from our trade agreements.

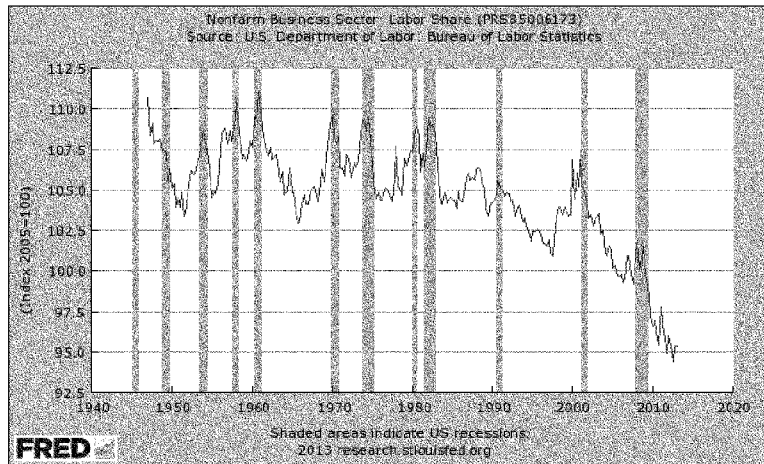
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<sup>2</sup> See, e.g., Ralph E. Gomory and William J. Baumol, *Global Trade and Conflicting National Interests*, Massachusetts Institute of Technology, 2000.

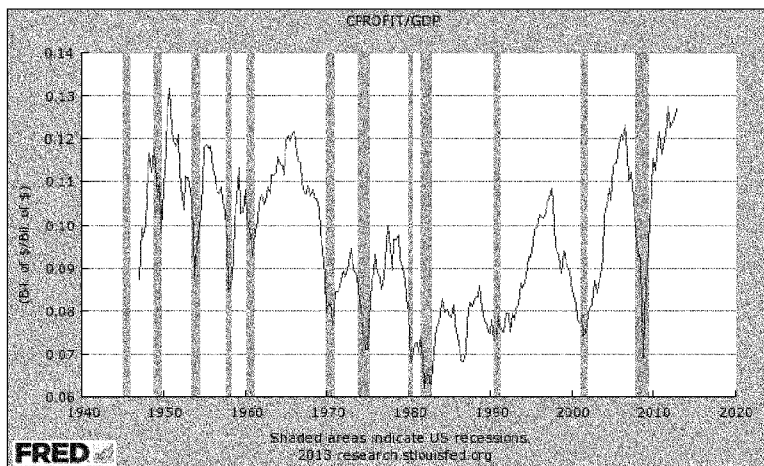
<sup>3</sup> See Scott, *supra* note 1.

<sup>4</sup> Robert E. Scott, "NO JOBS FROM TRADE PACTS: The Trans-Pacific Partnership Could Be Much Worse than the Over-Hyped Korea Deal," EPI Issue Brief #369, Economic Policy Institute, Jul. 18, 2013, available at: <http://www.epi.org/publication/trade-pacts-korus-trans-pacific-partnership/>.

U.S. workers' share of national income is at its lowest level since the 1940s and is plunging:



On the other hand, the share of corporate profits has reached its highest level since 1952:



Source: FRED Graphs/St. Louis Federal Reserve Bank, available at <https://research.stlouisfed.org/fred2/>.



To serve as a net benefit for any but the 1%, the TPP must change course—more of the same will only promote the status quo, which is unacceptable.<sup>5</sup> The AFL-CIO has commented numerous times on the shortcomings of past trade agreements and the need for specific, achievable changes that would help U.S. workers and producers who are competing in a global marketplace. I will not reiterate all of our specific concerns here, but suffice it to say that past agreements have failed to address our concerns regarding jobs, investment, services (including public and financial services), government procurement, currency, intellectual property protection, worker rights, environmental safeguards, food and product safety, rules of origin, and other issues important to working families.<sup>6</sup>

Without addressing the still-secret text of the TPP, I will discuss a few of our concerns and recommendations with regard to some of the most pressing topics of the agreement.

#### **LABOR**

It is imperative that the USTR address economic justice and the societal infrastructure that can promote it, not as an adjunct goal, but as a central part of its trade and economic development efforts. Freedom of association and the existence of free civil society organizations, including trade unions, are essential to a democracy. These institutions provide a venue for ordinary citizens to raise their voices collectively, claim their rights, advocate for policies that serve their constituents and the broader public interest, and hold government accountable. As large membership-based institutions advocating for social and economic justice

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<sup>5</sup> See, e.g., Jacob S. Hacker and Nate Loewentheil, "Prosperity Economics: Building an Economy for All," 2012, available at: <http://www.prosperityforamerica.org/wp-content/uploads/2012/09/prosperity-for-all.pdf>.

<sup>6</sup> For a more comprehensive discussion of the AFL-CIO's specific suggestions for the TPP, please refer to the AFL-CIO's Testimony Regarding the Proposed United States-Trans-Pacific Partnership Trade Agreement, submitted to the USTR, January 25, 2010.

for workers and citizens, independent trade unions are among the most important of these institutions.<sup>7</sup>

To achieve these goals, the AFL-CIO recommends that the TPP build upon the changes achieved in the U.S.-Peru Trade and Globalization Agreement in 2007 (also known as the “May 10” provisions). In other words, the labor provisions in the TPP must be stronger than those achieved in any prior agreement. The USTR should fulfill the promise that the “May 10” provisions will serve as a floor, not a ceiling, on labor rights. These provisions represented an important step forward for labor rights, but did not contain all of the essential elements of an effective labor chapter.

The AFL-CIO, in conjunction with our counterparts from the majority of TPP countries, developed and submitted to the USTR and its counterparts a “New Model Labor and Dispute Resolution Chapter for the Asia Pacific Region,” which spells out in detail the recommended text for the labor chapter. Beyond reference to the ILO core conventions and the elimination of Footnote 2 from the Peru text<sup>8</sup> to clarify that ILO jurisprudence will help give meaning to each party’s labor rights obligations, the AFL-CIO has several additional recommendations.

The labor provisions should also apply in the broadest context possible: limiting consultation and redress solely to violations in which there is a “persistent pattern of failure” in a “trade-related sector,” as is the case in NAFTA, excludes too many workers from coverage. Not only do these limitations make it exceedingly difficult to effectively pressure recalcitrant governments to do the right thing and protect their own workers—they allow governments to manipulate and depress their entire labor market through failure to enforce labor laws or defend

<sup>7</sup> The interaction with the Investment Chapter here is clear: foreign investors must not be able to use the ISDS process to challenge improvements in labor laws or increased social protections.

<sup>8</sup> U.S.-Peru Trade and Globalization Agreement, Art. 17.2, available at: [http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset\\_upload\\_file73\\_9496.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file73_9496.pdf).

labor rights in sectors deemed not trade-related (e.g. the public sector). Such purposeful manipulation of the entire labor market could have massive trade-distorting effects and yet be out of reach under the current rules.

In addition, the TPP should include enforceable standards for acceptable conditions of work, the right to strike, and the treatment of migrant workers. Given the labor mobility among the TPP countries, and the protections for migrant labor in the NAFTA side agreement known as NAALC (despite the weakness of the NAALC), omission of protections for migrant labor in the TPP would be a mistake with the potential to exacerbate the tendency of bad-actor employers to abuse, threaten, and take advantage of migrant workers to the detriment of native and migrant workers alike.

The labor chapter's enforcement mechanism must be timely, accessible, and reliable. The TPP's labor provisions must ensure that meritorious petitions proceed in a timely manner to the next step of the process until they are resolved (including through dispute settlement if necessary). Workers' livelihoods depend on swift justice. Should countries fail to resolve their differences during the consultation stage and proceed to the dispute settlement stage, the process must be at least as strong and swift as that available to business interests, and penalties should, where possible, be directly related to the sectors in which violations occur (in order to leverage political power of employers who fear loss of trade benefits) and high enough to encourage parties to engage seriously at the initial stages. Token fines unrelated to the economic sectors where the violations occur will do little to encourage private sector compliance or deter future violations.

Given that failure to uphold internationally recognized worker rights acts as a hidden subsidy for imported goods and services, the AFL-CIO is disappointed that more U.S.-based producers have not joined the call for stronger labor standards in trade agreements.<sup>9</sup>

#### **STATE-OWNED ENTERPRISES**

The potential disciplines that will cover State-Owned, State-Controlled, and State-Influenced Enterprises (collectively, SOEs) represent, perhaps, the most important area for new disciplines in the TPP which could (if done right) have a beneficial impact on U.S. jobs. Unlike in the U.S., SOEs are common in Vietnam, Malaysia, and Singapore. Moreover, given the interest expressed by both U.S. and Chinese officials in China's participation in the TPP, SOEs are of increasing concern for U.S. workers. The AFL-CIO does not oppose SOEs and does not seek to privatize them. However, given America's lack of a comprehensive manufacturing strategy or adequate governmental support for manufacturing, without strict disciplines on anti-competitive behavior by SOEs, U.S. workers and producers remain at risk from those entities. The U.S. cannot afford to get disciplines in this area wrong.<sup>10</sup>

An SOE can be a threat to the U.S. economy when it "competes" in the commercial arena with a subsidies unavailable to U.S. producers. These subsidies can range from raw materials or other inputs at below-market rates to access to preferential debt and equity financing, including soft "loans" from state-owned banks that do not need to be repaid.

Many SOEs consistently operate in a manner that gains them market share—rather than profits—and they do so with the advantage of these government subsidies. A private enterprise

<sup>9</sup> We applaud producer organizations that have already done so. *See, e.g.*, "21<sup>st</sup> Century Trade Agreement Principles," Coalition for a Prosperous America, available at: [http://action.prosperousamerica.org/p/salsa/web/common/public/content?content\\_item\\_KEY=10077](http://action.prosperousamerica.org/p/salsa/web/common/public/content?content_item_KEY=10077).

<sup>10</sup> This is true as regards our so-called "defensive interests" as well: the disciplines on SOEs must not put at risk U.S. entities that could be considered SOEs, whether at the local, state, or federal level, no matter which public service they engage in, from power generation (e.g., the Tennessee Valley Authority), to public transportation (e.g., Amtrak), to education (e.g., the University of California).

would not long remain in business if it failed to respond to the market, but, because they are propped up by state resources, SOEs not only can, but do. Even when they lose money by selling goods at below-market prices, they have forced U.S. competitors out of business, gaining market share that can be exploited later when the competition has been thinned.

I will concentrate my remarks on SOE activities here in the U.S. From the workers' perspective, the location of an employer's corporate headquarters is increasingly unimportant. There are good and bad employers no matter where they are headquartered. The critical question for workers is the behavior of the employer.

If the U.S. imports a subsidized product from an SOE that injures a company and its workers, we have existing trade remedies (such as countervailing duties) to address the impact. But if that SOE instead becomes a foreign investor in the U.S. and produces a product at a cost far below that of an existing U.S. firm because of the subsidized inputs, there is no existing remedy in U.S. law to address that harmful activity. In addition, in certain circumstances, an SOE producing in the U.S. might have standing under our trade laws to challenge an action by a domestic producer against unfairly traded products from overseas. The TPP must seek to address these shortcomings.

Several Chinese entities have already entered into or announced transactions that could pose problems for U.S. producers and their employees. Tianjin Pipe, a Chinese SOE, has broken ground on a \$1 billion seamless pipe facility in Texas—its products will be used to transport oil and gas, a thriving business given the shale oil boom. However, as an SOE, it is likely that Tianjin has received from the Chinese national or sub-national governments a variety of benefits unavailable to its U.S.-based private sector competitors, including low-cost or no-cost capital, favorable regulatory and tax treatment, and inputs at below-market rates.

If Tianjin were exporting to the U.S., such preferential treatment—if proved—could be addressed through anti-dumping and countervailing duty laws, but such laws do not apply to goods made in the U.S. by foreign investors, which leaves injured U.S. competitors at a disadvantage. Moreover, if any SOE’s goal in investing in the U.S. is to drive U.S. competitors out of business through predatory behavior, the long-term effects on the U.S. economy and its workers could be devastating. The result will be fewer jobs and lower wages as firms are driven out of business and higher prices as competition is reduced. In addition to commitments within the TPP itself, the AFL-CIO has also recommended an update to domestic laws to ensure that an effective remedy is readily available to the private sector to fight for its interests when SOE behavior on U.S. soil injures U.S. businesses and their employees. We have also recommended increased transparency and the creation of a rebuttable presumption that an SOE is acting on its home country’s behalf, not the interests of our workers, if it seeks to block action to protect an injured party in the U.S. This particular chapter faces strong resistance by TPP partner countries—and whether it will result in strict disciplines that benefit non-subsidized U.S. producers and workers remains in doubt.

Finally, the AFL-CIO recommends that Congress consider whether the existing screening mechanism for FDI is adequate to the task. The existing mechanism through which foreign investments are screened is the interagency Committee on Foreign Investment in the United States (CFIUS). Though CFIUS rarely makes the news, the few times that it does make it appear that CFIUS is constantly busy blocking foreign investment into the U.S. Nothing could be further from the truth. On the contrary, CFIUS’s charge is quite limited: it reviews mergers and acquisitions (as opposed to “brand new” investments, known as “greenfield” investments), and it assesses threats to national security (as opposed to economic security).

In its 2012 Report to Congress, the U.S.-China Economic and Security Review

Commission (the Commission) recommended, among other things, that:

Congress examine foreign direct investment from China to the United States and assess whether there is a need to amend the underlying statute (50 U.S.C. app 2170) for the Committee on Foreign Investment in the United States (CFIUS) to (1) require a mandatory review of all controlling transactions by Chinese state-owned and state-controlled companies investing in the United States; (2) add a new economic benefit test to the existing national security test that CFIUS administers; and (3) prohibit investment in a U.S. industry by a foreign company whose government prohibits foreign investment in that same industry. (p. 23)

The AFL-CIO strongly supports these and other recommendations in the Commission's report.<sup>11</sup> While we welcome foreign investment, we do not believe the current mandate of CFIUS adequately secures the economic interests of U.S. workers or the firms that employ them. Inclusion of these and related recommendations within the scope of the study could provide Congress with relevant and timely advice as more SOEs invest in the U.S.

#### **RULES OF ORIGIN**

The TPP must include strong rules of origin that will target benefits to the parties to the agreement (particularly, of course, the United States)—rather than weak rules of origin that will allow non-parties, who have made no reciprocal obligations to the U.S., to reap the rewards. Our primary goal must be to expand employment opportunities here in America.

It is critical that the rules of origin are carefully crafted to promote production within the participating parties, which have each made commitments to each other. Low standards for “regional value content” will allow non-parties (such as China) to reap great benefits from the

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<sup>11</sup> It is important to note that the AFL-CIO is concerned with the question of how particular investments will help create or hinder sustained economic growth—not with the country from which they originate. The AFL-CIO urges Congress to consider the Commission's recommendations to expand CFIUS with respect to foreign investors *of any national origin*. An expanded review CFIUS review that considers America's economic security would be most helpful if it focused on job and economic impacts—not simply on the geographic source of the investment.

TPP.<sup>12</sup> Potential tariff benefits combined with strong rules of origin can tip the scale on a decision to build a new plant or keep a plant open in the U.S. or in a TPP country. On the other hand, a weak rule of origin gives producers a free pass to locate in a non-TPP country, knowing that only a token percentage of the value of the product, or a token transformation of a product from one tariff line to another, will be required to occur within a TPP country in order to reap the tariff benefits of the deal without having to subscribe to the other disciplines and provisions of an agreement. Because America's workers bear the brunt of decisions to produce elsewhere, we cannot emphasize strongly enough the importance of strong rules of origin that promote production within the TPP.

Moreover, in a trade agreement which is designed to grow in membership, and has no maximum number of contracting countries, the proposed rules of origin must be designed to accommodate these potential changes. The rules of origin must take into account the promotion of domestic job growth in the U.S., not just for today or tomorrow, but for the next decade and into the future. Rules of origin that respond more to the corporate needs of today (looking forward only to next quarter's stock prices) than to the long-term needs of America's domestic economy and the workers who make it run will not achieve the domestic economic growth we need.

A decision based on a simple calculation of where a product is currently produced does nothing to provide the right incentives to locate production within the TPP in the future. Our goal must be to maintain and then reclaim supply chains that have outsourced and offshored U.S. production and jobs. Simply cementing in place the status quo is not good enough. Given that the TPP model is designed to include an ever-growing list of countries, these rules of origin

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<sup>12</sup> An example of such a low RVC is the 35% standard for automobiles contained in the U.S.-Korea Trade and Globalization Agreement.



should be designed to increase as the number of parties increases. Like NAFTA's rule of origin on automobiles, some should be designed to become more stringent over time, promoting growth of production within the agreement, rather than incentivizing choices to maximize production elsewhere.

Without such a forward-thinking structure, the current trend of factory closures and depressed job growth is likely to continue. America's workers continue to wait to see if these recommendations will be included in the TPP.

### **INVESTMENT RULES**

Too often U.S. trade policy assumes all foreign investment is good, and promotes it for its own sake rather than on the basis of its effects on employment, wages, and standards of living either here or abroad. Past U.S. trade and globalization agreements, such as the U.S.-Korea Trade and Globalization Agreement, have protected broader concepts of property than would apply under U.S. takings law, have given wider latitude for determining whether an "indirect expropriation" has occurred, and have included the obligation to provide "fair and equitable treatment" as part of a "minimum standard of treatment" that foreign investors can claim a right to receive—but which domestic investors have no claim to. This minimum standard of treatment—an obligation whose scope is determined by reference to "customary international law"—provides no fixed obligation.<sup>13</sup> Together, these provisions grant foreign investors with enhanced opportunities to seek compensation from the public purse for a variety of real or perceived injuries.<sup>14, 15</sup>

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<sup>13</sup> Customary international law, like common law, can develop over time. However, due to use of arbitrators (who may cycle between acting as advocates and acting as neutrals) rather than judges and the lack of binding precedent in investment cases, bad arbitral decisions (e.g., decisions which expand the concept of customary international by taking inappropriate factors into account) can improperly expand the obligation a nation may owe as part of the minimum standard of treatment.

<sup>14</sup> For example, investors have claimed that a state ban on a toxic gasoline additive constituted an indirect expropriation. *Methanex Corp. v. U.S.* <<http://www.state.gov/s/l/c5818.htm>>.

The investor-to-state dispute settlement mechanism (“ISDS”) is particularly troublesome and should not be included in the TPP.<sup>16</sup> ISDS allows foreign investors to bypass domestic courts and challenge a government directly before an international arbitration panel.<sup>17</sup> The right to bypass the judicial system is a right domestic investors do not have. The system allows foreign investors to bypass U.S. Article III courts and have their claims heard in an undemocratic, unaccountable forum.

Not only is the forum different, but so is the standard of review. Using the U.S. as an example, ordinary considerations, including the possibility of sovereign immunity and the “rational basis” standard, need not apply—nor is a panel required to consider whether the good of the public should outweigh the private right to make a profit. Instead, the panel considers whether the defendant nation violated its obligations to the foreign investor under the trade agreement in question—obligations that are decidedly one way, given that the investor makes no reciprocal promises to the defending nation or its people.

Since the principle of *stare decisis* does not govern investment panels, a foreign investor is always free to pursue a failed but potentially lucrative challenge, and a subsequent panel is free to rule favorably.<sup>18</sup> Moreover, past U.S. investment provisions have excluded minimal constraints, such as exhaustion of domestic remedies, a standing appellate mechanism, or a diplomatic screen, each of which could act to limit abuse of this private right of action.

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<sup>15</sup> Even the very labor standards the U.S. fights for in its current trade model are not definitively exempt from an investor challenge should a foreign investor decide that a particular provision for the benefit of workers denies him or her fair and equitable treatment or goes too far in interfering with an assumption of risk or expectation of profit. Congress should protect labor and workplace laws from investor challenges in the TPP and all future agreements.

<sup>16</sup> USTR has already committed to including ISDS in the TPP. <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/outlines-trans-pacific-partnership-agreement>.

<sup>17</sup> U.S.-Peru Trade and Globalization Agreement, Chapter 10 (available at:

<[http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/assct\\_upload\\_file78\\_9547.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/assct_upload_file78_9547.pdf)>).

<sup>18</sup> Of course, the lack of *stare decisis* may cut in the opposite direction as well because it can result in a decision favoring government action even where a prior panel found for a private party. In the long run, however, the lack of binding precedent is likely to generate more challenges, greater costs to the public, less certainty for policymakers, and a stronger chilling effect against measures similar to those which attracted prior challenges.

Perhaps the most telling fact about the benefits of ISDS is that they *only* apply to investors. This special privilege to sue a national government in an international arbitration forum is denied to labor and human rights groups pursuing enforcement of the labor chapter, as well as to environmental advocacy groups seeking redress for a violation of environmental obligations. No credible legal or philosophical argument has ever been offered to explain this differential treatment of property rights and labor rights.

These investment provisions may provide U.S. producers an incentive to invest offshore (compounding the incentive provided by U.S. tax treatment of foreign income). Of course, lower wages, safety standards, and environmental regulations can provide incentives of their own, but businesses are surely also aware of the power of the mere threat of an ISDS arbitration to stop new policies from being implemented. Such threats may be particularly effective in developing nations whose legal resources can be dwarfed by those of a large global corporation.<sup>19</sup> Unfortunately for developing countries, the evidence is mixed on whether there is even a correlation—much less a causal relation—between ISDS and attracting foreign direct investment and whether such foreign investment has had the desired development effects.<sup>20</sup>

<sup>19</sup> For more information on the increasing use of the ISDS mechanism, see the May 2013 UNCTAD IIA Issues Note, “Recent Developments in Investor-State Dispute Settlement (ISDS),” which reported that a new record for the number of ISDS cases filed was set in 2012, with at least 58 new cases—this is the highest number of known treaty-based disputes ever filed in one year (not all filings are public, so the real number is likely far higher). More information available at: [http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf).

<sup>20</sup> See, e.g., Foreign Investment and Sustainable Development: Lessons from the Americas (Kevin P. Gallagher, Roberto Porzecanski, Andrés López, and Lyuba Zarsky, eds., 2008) and Axel Berger et al., “Do Trade and Investment Agreements Lead to More FDI? Accounting for Key Provisions Inside the Black Box,” Staff Working Paper ERSD-2010-13, World Trade Organization, Economic Research and Statistics Division, Sep. 2010, available at: [http://www.wto.org/english/res\\_e/reser\\_e/ersd201013\\_e.pdf](http://www.wto.org/english/res_e/reser_e/ersd201013_e.pdf).

# **GOVERNMENT PROCUREMENT/BUY AMERICAN/DOMESTIC ECONOMIC POLICY**

The TPP must not surrender or limit the application of domestic economic development, national security, environmental protection, or social justice policies, including policies related to Buy America/Buy American.

The AFL-CIO has long maintained that trade agreements should not constrain federal and sub-federal procurement rules that serve important public policy aims such as local economic development and job creation, environmental protection and social justice—including respect for human and workers' rights. Maintaining this policy space is not an academic issue. In 2008, procurement policy became part of the debate over the American Recovery and Reinvestment Act, the largest domestic economic stimulus program since the Great Depression. Even after the U.S. reiterated its intention to fully adhere to its procurement obligations under the WTO Agreement on Government Procurement and various additional trade and globalization agreements, foreign firms were not satisfied that they had sufficient access to U.S. federally-funded projects. USTR must be more responsive to America's working families than it is to the complaints of enterprises that do not operate in the U.S.

After the current record-slow recovery ends, Congress and the Administration should carefully consider the diminished impact of fiscal stimulus caused by procurement commitments (which decrease the ability of lawmakers to direct funds toward domestic job creation) and carve out from its TPP commitments all procurement projects funded by stimulus funds appropriated in response to a verified recession.

While access to foreign procurement does create opportunities for U.S. firms, some of which *may* support jobs in the United States, the question remains open whether the jobs potentially lost to opening U.S. procurement to foreign bidders are greater than the jobs

potentially gained by U.S. firms' access to foreign procurement markets. Also important are the kinds of jobs at stake. The AFL-CIO has repeatedly asked the USTR to provide figures for jobs created and lost due to prior procurement commitments, but has yet to receive a response.

Additionally, the AFL-CIO still has concerns left unaddressed by the May 10, 2007 compromise. For many years, the AFL-CIO has raised concerns about technical specifications in procurement chapters. The procurement chapter of the U.S.-Peru Trade and Globalization Agreement took a good step forward by providing that a procuring entity is not precluded from preparing, adopting, or applying technical specifications:

- (b) to require a supplier to comply with generally applicable laws regarding
  - (i) fundamental principles and rights at work; and
  - (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health

However, to promote good jobs, the TPP should expand the language above to include living wage laws and, for the sake of clarity, prevailing wage laws. It must also leave room for the bidding process for non-discriminatory but potentially innovative policies such as providing a better score for employers with better on-the-job safety records or excluding bidders that do not have "clean hands" (e.g., firms that have failed to pay taxes, have outstanding unfair labor practice charges, OSHA violations, or outstanding violations of other national, state, or local laws).

Finally, but importantly, the AFL-CIO expects that no sub-federal entities will be bound to the procurement provisions of the TPP without their express consent and that none of the exemptions or exceptions taken from obligations undertaken in the WTO GPA will be deleted or altered in any manner (e.g., highway and transit projects). We ask for Congress's support in ensuring that each country's ability to stimulate its own economy is not ceded to global corporations as part of the TPP.

### APPROPRIATE TRADING PARTNERS

The AFL-CIO believes that Congress should carefully consider the choice of partners for any trade and globalization agreement. In choosing partners, Congress should analyze not only the likely commercial effects of reduced tariffs, increased investor rights, and the like, but also consider the human and labor rights conditions prevailing in the territory of the proposed partner. Congress should not cede these choices to USTR.

With regard to human rights (including labor rights), due to existing commitments, the U.S. has already lost the use, in certain circumstances, of important economic tools to address these goals. The AFL-CIO does not support further limits on our ability to exert carefully crafted economic, rather than military pressure, to address nations that engage in egregious human rights violations. That is why we believe that the TPP must not allow “any willing partner” to join.

Instead, the U.S. government should negotiate a democracy clause in the TPP. Linking market access and democracy is not without precedent in regional economic agreements. For example, the members of the Southern Cone Common Market (MERCOSUR), which includes Brazil, Argentina, Uruguay, and Paraguay, signed onto the Ushuaia Protocol on Democratic Commitment in the Southern Common Market in 1998.<sup>21</sup> In the event of a “breakdown of democracy” in any of the member states, Article 5 of the Protocol allows that the other state parties may apply measures that range from suspension of the right of the offending nation to participate in various bodies to the suspension of the party’s rights and obligations under the Treaty of Asuncion (the MERCOSUR foundational agreement). We have also seen that economic engagement in the form of a trade agreement does not necessarily yield democratic

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<sup>21</sup> Text of the Protocol is available online at [http://untreaty.un.org/untfs/144078\\_158780/20/3/9923.pdf](http://untreaty.un.org/untfs/144078_158780/20/3/9923.pdf). Associate Mercosur members Chile and Bolivia also signed onto the Protocol in 1998.

reform and respect for human rights. The Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) provides a tragic example, with violent repression of union and other human rights advocates increasing since implementation. The U.S. government has already accepted submissions under the labor chapter regarding violations in Guatemala, Honduras, and the Dominican Republic.

With respect to Vietnam, though we welcome cooperative efforts to further empower Vietnamese workers—who are already engaging in wildcat strikes to better their wages and working conditions when existing mechanisms fail them—the AFL-CIO is still unclear how Vietnam will meet anything close to minimum acceptable labor standards upon implementation of the agreement should the agreement conclude this year. We fear that Vietnam will go the route of Colombia, with the imposition of a Labor Action Plan that lacks measurable benchmarks for progress and fails to require sustained action or thorough implementation. Such a cursory approach would benefit neither the workers of the U.S. or those of Vietnam—and would likely encourage the transfer of U.S. jobs to Vietnam, where unscrupulous employers would take advantage of inadequate laws to abuse workers' rights.

With respect to Japan, our concerns are commercial in nature. In 2012, the U.S. had a \$76.3 billion deficit in trade in goods with Japan,<sup>22</sup> nearly 70% of it in the auto sector. The AFL-CIO deeply appreciates the efforts that USTR has made thus far to secure important commitments from Japan that will benefit America's workers, communities, and businesses, but our experience gives us little faith that these commitments will be completely implemented or effectively enforced. Therefore, the AFL-CIO is concerned that including Japan in the TPP

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<sup>22</sup> United States Census Bureau, Trade in Goods with Japan, available at: <http://www.census.gov/foreign-trade/balance/c5880.html>.

would adversely impact America's workers and U.S. domestic production, particularly in the auto sector.

Moreover, a number of critical issues were excluded from the deal announced in April, including concrete commitments on currency, auto parts, and labor rights. Japanese automakers manufacturing in the United States have persistently denied their workers a fair and democratic opportunity to decide on union representation. We believe securing additional commitments in these areas is essential.

USTR has failed so far to answer important questions about reciprocal market access, rules of origin for autos and auto parts, currency provisions, tariff reduction schedules for autos and auto parts, snap-back tariffs, and the like.

To combat likely harms to U.S. workers from a status quo approach to Japan's entry into the TPP, any future reduction in U.S. tariffs on Japanese imports must be tied to an actual, verifiable opening of the Japanese auto market and a substantial reduction in our bilateral auto trade deficit with Japan. In recognition of the dramatic risk involved in a premature phase-out of U.S. tariffs, USTR has already worked to secure an agreement that auto tariffs will be phased out in accordance with the longest staging period of any other product in the TPP. However, as previously noted, auto parts were not included in the initial agreement with Japan and the length of the phase out period has not yet been made public. Any tariff phase-out must be coupled with significant reforms and established penetration levels into the Japanese marketplace before any such phase out schedule begins. The inclusion of Japan in the TPP puts the recently renewed U.S. auto industry (an export leader) and its workers at grave risk.<sup>23</sup>

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<sup>23</sup> For a comprehensive list of provisions essential to creating the foundation for fair and open trade between the U.S. and Japan in automotive goods, please see the UAW statement on Japan's inclusion in the Trans-Pacific Partnership (TPP), Apr. 12, 2013, available at: <http://uaw.org/articles/uaw-statement-japan%E2%80%99s-inclusion-trans-pacific-partnership-tp>.



## INTELLECTUAL PROPERTY RIGHTS & ACCESS TO MEDICINES

Intellectual property (IP) protections—designed to promote innovation and serve the public interest—are critical to creating and maintaining domestic jobs, as well as to increasing exports. The U.S. economy produces many products for which IP is critical, from movies, television shows, sound recordings, and documentary productions to fiber optics, specialty steel, medicines, and countless other products.

In particular, the creative arts economy is a significant contributor to economic growth, the gross domestic product of our nation, and our rich cultural heritage. When we promote and protect the unique and original artistic and cultural contributions of America's artists and entertainers, we help these artists and entertainers to prosper. The IP provisions of past U.S. trade and globalization agreements have not effectively deterred rampant counterfeiting or online sites that profit from digital IP theft, a failure that resulted in lost jobs and reduced incomes for many workers. The AFL-CIO supports efforts by Congress and the Administration to address IP theft that jeopardizes worker incomes.

To effectively promote U.S. jobs and standards of living, however, strong and effective IP protections must also secure *legitimate generic competition*—particularly in the area of medicines. Rules that prevent fair competition from generic producers not only fail to create as many jobs as they might, they also jeopardize public health both here and abroad, by ensuring that life-saving medicines are priced out of reach of many working people—in the U.S. and elsewhere.

Past U.S. trade and globalization agreements have provided excessive protections for the producers of brand-name pharmaceuticals. Indeed, these agreements far exceeded the international standards for patent protection established in the WTO Agreement on Trade-

Related Aspects of Intellectual Property Rights (TRIPS). The AFL-CIO opposes TRIPS “plus” provisions because they jeopardize access to affordable medicines, particularly in developing countries.

The May 10, 2007 compromise took a significant step forward in cutting back the most onerous requirements for the IP protection of pharmaceuticals in U.S. trade and globalization agreements. However, harmful language on data exclusivity remains in the Peru Trade and Globalization Agreement.<sup>24</sup>

Data exclusivity precludes use of clinical trial data of an originator company by a drug regulatory authority, even to establish marketing approval, normally for a defined period (five years in past U.S. trade and globalization agreements). As a result, a generic producer cannot secure pre-approval for a generic version of a patented medicine until after the data exclusivity period has expired (unless that producer runs its own tests—a costly and ethically dubious proposition). This limitation can delay legitimate generic drugs from reaching consumers in a timely fashion.

Data exclusivity can thus impose unnecessary costs—in financial and human health terms—on public health systems, which could be forced to purchase brand-name pharmaceuticals at elevated prices when cheaper generic medicines would otherwise be available but for the trade agreement. For example, a 2007 study by Oxfam found that the IP provisions of the U.S.-Jordan Trade and Globalization Agreement, especially the data exclusivity provisions, prevented generic competition for 79 percent of medicines launched by 21 multinational pharmaceutical companies in the first five years the agreement was in effect. Further, the study found that medicine prices in Jordan rose 20 percent, costing the government between \$6.3 and

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<sup>24</sup> The data exclusivity provisions are found in Article 16.10, sub-sections 2 (b) and (c) of the Peru Trade and Globalization Agreement.

\$22 million in additional expenditures for medicines with no generic competitor as a result of enforcement of data exclusivity.<sup>25</sup>

Despite progress in the U.S.-Peru Trade and Globalization Agreement to roll back TRIPS-plus requirements, U.S. trade policy has since taken a turn for the worse with regard to access to affordable medicines.

For example, the AFL-CIO opposes efforts (such as those included in the U.S.-Korea Trade and Globalization Agreement) to increase the power and influence of private sector drugmakers over the pricing decisions of public health systems and pharmaceutical benefit plans. The TPP must not include such provisions. Instead, it must not only protect current government-supported health care programs in the U.S. (including but not limited to Medicaid, Medicare, the Veterans Health Administration, and Community Health Centers) and abroad, but also ensure that countries retain the policy space to expand and improve such programs.

Further, the U.S.-Korea Trade and Globalization Agreement requires patent term extensions for new methods of use and manufacture of a pharmaceutical product.<sup>26</sup> It also effectively eliminates “pre-grant opposition,”<sup>27</sup> which allows the validity of a pharmaceutical patent to be challenged *before* a patent is granted, a process which makes it cheaper and quicker to dispose of bad patent applications than *after* a patent has been granted to an undeserving application. These provisions should not be repeated in the TPP because they further delay

<sup>25</sup> “All Costs, No Benefits: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines,” Oxfam Briefing Paper 102, Oxfam International, Mar. 21, 2007, available at: <http://dontradedourlivesaway.files.wordpress.com/2011/01/all-costs-no-benefits.pdf>.

<sup>26</sup> U.S.-Korea Trade and Globalization Agreement, Art. 18.8.6 (b), available at: [http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset\\_upload\\_file273\\_12717.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file273_12717.pdf).

<sup>27</sup> *Id.*, Art. 18.8.4.

legitimate generic competition that plays a role in increasing access to medicines for working families.<sup>28</sup>

The AFL-CIO strongly supports governmental efforts to control costs of medicines so as to be able to provide affordable medicines to the public.

## CONCLUSION

USTR and its partners must embark on economic development policies that explicitly address the creation of good jobs, the development of a thriving middle class, and respect for domestic policy space. Such an approach would require abandonment of the status quo. It would also require the cooperation of global corporations, many of which are used to using their leverage to play off one nation against the other in a race to the bottom in wages, benefits, social protection strategies, conservation, and public health and safety measures. The AFL-CIO cannot emphasize strongly enough that, for a trade agreement to benefit workers here and abroad, it must prioritize fundamental labor rights, the creation of high wage, high benefit jobs, and balanced and sustainable trade flows. When workers can exercise their fundamental rights, as well as have a secure and hopeful future and sufficient incomes, their demand will help businesses and the global economy grow in a sustainable way.

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<sup>28</sup> For additional information, see Ruth Lopert and Deborah Gleeson, "The High Price of "Free" Trade: U.S. Trade Agreements and Access to Medicines," *The Journal of Law, Medicine & Ethics*, Vol. 41, Iss. 1, Apr. 12, 2013, available at: <http://onlinelibrary.wiley.com/doi/10.1111/jlme.12014/pdf>.

Mr. POE. I thank all four of our witnesses. Just so everyone knows, in approximately 30 minutes we are supposed to have votes, so I will save my questions until last and we will see how many members we can get in before votes. The chair recognizes the gentleman from Illinois, Mr. Kinzinger.

Mr. KINZINGER. Thank you, Mr. Chair. Thank you for that. I am going to hopefully keep this under 5 minutes. Politicians talking get old sometimes.

Several countries not currently involved in the negotiations have expressed interest in signing on to the TPP once it is done, such as Taiwan. What is the likelihood that they will and what kind of opportunity does this present for U.S. trade. And I will ask just the three gentlemen here at the end if you can answer that.

Mr. Gerwin?

Mr. GERWIN. Yes, Congressman. I think it does create an opportunity for those countries to join on. As I mentioned in my testimony, one of the things that is good about the TPP is that we have an expanding group of countries that are coalescing around high standards. And other countries are attracted to that because I think they believe very strongly that if they don't get in the game, they are going to get left out. So I think there is a certain degree of attraction that the TPP has that will bring in other countries. I know other countries—not only in Asia, but in Latin America—have been expressing interest in joining.

Mr. KINZINGER. Good. Mr. Metalitz?

Mr. METALITZ. Yes, I would agree with what Mr. Gerwin said. It certainly provides that opportunity. It is a very complex negotiation even now and so I think the focus should be on getting that high-standard agreement in place and then if there are countries that are willing to step up to those standards they could certainly be considered at that point.

Mr. SHEHATA. I guess a way to certainly raise the game of countries that want to join it is a template that forces them to live with disciplines that make open economy a reality. So from a UPS standpoint, we believe in a very efficient supply chain, so if those countries abide by standards that allow for that movement and velocity of goods, we think it is a good idea.

Mr. KINZINGER. Do you believe there are negotiating areas in which the U.S. position will change if Congress weighs in and presses hard enough? And if so, what are they?

Ms. Drake, I will start with you.

Ms. DRAKE. I believe if Congress weighs in and presses hard enough the USTR could change its negotiating objectives in any area. Congress has the authority under the Constitution to negotiate international trade so the administration should follow Congress' wishes. I think it would be important particularly for Congress to weigh in regarding state-owned enterprises. I know from speaking with negotiators from other countries that they do not like the U.S. proposal. They do not want their state-owned enterprises to be subject to disciplines that would level the playing field. So that would be one potential area and I would also ask Congress to look at other commercial sectors like rules of origin, Buy American, and these kinds of things to help us propose exports.

Mr. KINZINGER. Okay, sir?

Mr. SHEHATA. Yes, actually, from a state-owned enterprise's standpoint, my comments officially were focused on a level playing field. We do have concerns to ensure that within the negotiations on a level playing field against state-sponsored or state-owned enterprises is critical and it is a focus area of UPS.

Mr. METALITZ. I think Congress has weighed in in many ways already in support of strong copyright protections in this agreement, but I think it would be valuable to continue to do so. This is a tough negotiating area on some issues and so it is important to express that.

Mr. KINZINGER. Any thoughts, Mr. Gerwin?

Mr. GERWIN. Yes, Congressman. I agree with Ms. Drake. I think state-owned enterprises are a very, very important issue to focus on, not only for this agreement, but because we are setting a template for the world and we can use this to pressure other countries that are not part of these discussions like China to reconsider their policies on state-owned enterprises as well.

Mr. KINZINGER. And then finally, what are the most significant obstacles that will impede the 12 countries involved in the TPP from reaching an agreement by the end of the year? And I will ask all four of you. I have got 1 minute left.

Mr. Gerwin?

Mr. GERWIN. I think the biggest obstacle, Congressman, is the lack of comprehensivity. If the agreement is not comprehensive, if we are not willing to enter into a comprehensive agreement, the other countries we are negotiating with will not as well and we will enter into this downward spiral where momentum will come out of the negotiations. And if we do get something, we are not going to get something that is in the best interests to the United States.

Mr. METALITZ. I would agree with that. This is a complex agreement, but if we don't aim for a comprehensive agreement that is possible, then we are not going to succeed.

Mr. SHEHATA. I think the recent acceptance of Japan to the agreement may have some delaying consequences. So we need to ensure that like Canada and Mexico that we bring them on board quickly.

Mr. KINZINGER. Okay, Ms. Drake?

Ms. DRAKE. The most controversial issues appear to be labor, environment, intellectual property, state-owned enterprises and investment. And my advice would be to weigh and get these things right, rather than rush to finish.

Mr. KINZINGER. I thank the witnesses, Mr. Chairman, thank you. I yield back.

Mr. POE. I thank the gentleman. The chair recognizes the ranking member for 5 minutes. Mr. Sherman.

Mr. SHERMAN. Thank you. I have got so many questions here. My colleague from Long Beach will be asking one that I wanted to ask, but it relates more to his district than mine and I still have too many questions. I have some efficiency ideas.

I would ask members of the panel to raise their hands if they believe that this agreement is going to reduce our trade deficit with the countries involved. Now I will let you know that our trade deficit currently totals \$154 billion, half of that if you exclude Japan.

So how many people think it will reduce? Mr. Gerwin, okay. And how many people think it will increase our trade deficit? Okay.

Which of you, either yourself or on record or your organizations are on record as predicting that MFN for China would dramatically increase our trade deficit? I see one hand. So the others who ventured—and that is Ms. Drake.

So the other two gentlemen here didn't get it right on China, but they are confident that they are going to get it right this time. And who here predicted that we would see an increase in our trade deficit with Korea after the Korea free trade agreement? I see Ms. Drake raising her hand. I see the other panelists not.

So nothing more connotes insanity than doing the same over and over again and expecting another result. I21Mr. Gerwin, I want to focus on the footnote that we got in our most recent agreements with Panama, Colombia, Korea and that stated that if we invoke the essential security provision allowing us to take action essential for our own national security interests or for international peace and security that that matter was not subject to review. Can you shed any insight as to why we would in effect be erasing that that we got in the Korea free trade agreement by not having it in the TPP?

Mr. GERWIN. I am afraid I can't, Congressman. I don't know exactly what is being discussed in the current context of the TPP and I must say I am not—I can't say I am a specialist on national security issues.

Mr. SHERMAN. Well, this is the subcommittee on terrorism and nonproliferation as well as trade and to think that we would sit by while that footnote is obliterated by those who want to make ever-greater concessions on trade issues during these negotiations is surprising. And perhaps we can get Government witnesses to come before us here and find out why they are hell bent on sacrificing our national security interests in an effort to go forward with this agreement.

Ms. Drake, can you give us a little insight as to what this enormous trade deficit means for working families in the United States?

Ms. DRAKE. Absolutely. The trade deficit represents lost jobs, either directly, they were here, they were shipped overseas so that different services could be produced there and then exported back to the U.S. Or they are a lost opportunity where it could have been job growth within the U.S., but it was job growth elsewhere.

Just from the first year of the Korea FTA which you discussed a bit in your opening statement, 1 year doesn't make a trend, but those first-year numbers are quite disturbing and it looks like the \$5.8 billion increase in our deficit from that first year represented about 40,000 jobs that American workers could have had.

Mr. SHERMAN. If I can interrupt and you are the only person here representing an organization who predicted something close to that result. What about currency manipulation? Raise your hands if you or your organization have been actively calling for enforcement of the rules against currency manipulation. Again, we see only Ms. Drake's hand go up.

And I would just ask how can you call it a free trade agreement if American workers are protected by an organization, namely the

U.S. Government that is unwilling to invoke the currency manipulation provisions that we have now, unwilling to call China a currency manipulator? I fear for the American people that they have to live with the trade decisions made by this Government. I yield back.

Mr. POE. To answer the gentleman's question, the United States Trade Representative was invited to testify and refused to testify. You can take that however you want to take it.

Mr. SHERMAN. Those with good cases don't hesitate to present them.

Mr. POE. Silence speaks loudly. The chair will recognize members of the subcommittee and then I see that we have some members of the full committee here.

Mr. Rohrabacher, as procedure, we will take those individuals and then ask questions at the end.

Mr. Lowenthal from California is recognized next.

Mr. LOWENTHAL. Thank you, Mr. Chair, and thank you Ranking Member also for this. You know, I have a question to follow up on what Ms. Drake had said before about looking at how these really make sure that we as we promote free trade, we also protect American workers. We promote jobs here. And so I want to give you an example of something that is recently come to my attention.

The question is how does this all fit together? Two large grain conglomerates, Mitsui and Marubeni, which are Japanese grain conglomerates have locked out members of the ILWU. I don't know if you are aware of that in both Oregon and in Washington State. At grain export facilities, they have locked out these workers despite the fact that the American member of the Northwest Grain Handlers Association, Cargill, has reached an agreement with the ILWU with the help of Federal mediators. And so, you know, how are these—now we are about to engage in a trade agreement with Japan. How are these American workers going to be treated by Japanese companies? Should we be considering Japanese participation in the Trans-Pacific Partnership when, in fact, we are beginning to document locking out workers that could be a radical harm to American workers? And shouldn't we ensure that these foreign-based companies treat American workers with the respect and the dignity they receive, or should we just kind of disregard this and just move forward.

My question is to you, Ms. Drake?

Ms. DRAKE. American workers are very concerned about Japan joining the TPP. We are not sure that either the U.S. or Japan are ready for the kind of negotiations they would need to make sure that workers can get the best deal.

When foreign investors, be they Japanese or from any other country, invest in the U.S., they should absolutely be held to the highest standards, the same standards as any other producer in the U.S. in terms of compliance with workplace safety laws, labor laws, wage standards, environmental regulations, all of it. And in fact, the AFL-CIO has suggested as one tool to incentivize foreign employers to operate here to comply to not give them access to some of the special privileges in a trade agreement such as investor/state dispute resolutions unless they absolutely have clean



hands and don't have unfair labor practice allegations against them or don't have unpaid taxes and that kind of thing.

Japanese corporations, in particular, tend to have good relationships with their Japanese unions and then often somehow it doesn't translate when they operate in the U.S. And so in particular, the United Auto Workers have been very involved in trying to improve those relationships and actually get some recognition agreements and some contracts with the Japanese auto makers.

Mr. LOWENTHAL. One additional question and we have heard about safety issues, now about labor issues, environmental issues, some of the other unfinished business about state-owned enterprises, some of the investment issues around investment of foreign corporations and legal issues around that where it will be heard.

I have another question. This committee, since I have been on Foreign Affairs under the leadership of both Chairman Royce, Chairman Smith have really taken a very aggressive stand and myself about human rights violations, especially about one country that wants—one or more of these countries like Vietnam. This is a very critical issue to members of this committee. Should human rights—should we be rewarding countries that have severe human rights violations? I ask any member of the panel.

Mr. GERWIN. Congressman, I absolutely agree. These are, as I mentioned in my testimony, I think it is extremely important that we use these agreements to promote American values.

Mr. LOWENTHAL. That is a critical American value.

Mr. GERWIN. That is absolutely a critical American value. But one of the things that often happens is that others are doing trade agreements as well. For example, China is doing lots of trade agreements. One of the things that China has done is taken the issue of labor, and taken the issue of the environment off the negotiating table in their trade negotiations with other countries. So if we don't do these trade agreements and do the best we can to enforce things like labor and the environment and other important American values—

Mr. LOWENTHAL. If it is not even being discussed, is it not a race to the bottom?

Mr. GERWIN. No, Congressman. I think it enhances our ability to have good relations with these countries and to push them to improve their economies and to improve—

Mr. LOWENTHAL. So first we reward them and then we push the issue or do we do it before we—

Mr. GERWIN. Well, I think we are doing it in multiple contexts, but I think having closer relationships with them is helpful. And as I said, countries like China don't care.

Mr. LOWENTHAL. I hope you are right, but most human rights organizations have indicated just the opposite. They have not since asking to join the TPP, their human rights violations have escalated rather than not escalating.

Mr. POE. The gentleman's time has expired. The chair recognizes the gentleman from Texas, Mr. Castro, for 5 minutes.

Mr. CASTRO. Thank you, Chairman Poe. I thank each of you for coming and lending your testimony on this issue today. I have a question around our previous labor agreements and how well we have enforced or how well actually the other countries have en-

forced labor provisions and how well we have done in overseeing those issues in terms of labor and the environment, et cetera, and also the evolution of what we have required of other countries in terms of labor conditions, working conditions, going from NAFTA forward?

Anybody on the panel is fine.

Ms. DRAKE. I am happy to start.

Mr. CASTRO. Sure.

Ms. DRAKE. The commitments in labor that the U.S. has asked for in its free trade agreements certainly have evolved over time and have improved generally over time. It wasn't necessarily straight line, but it started with sort of a side agreement that was largely unenforceable with NAFTA to a CAFTA standard of enforced labor laws to what is now the high water mark of the March 2007 agreement in Peru which again is a promise to be a floor and should be higher in this agreement.

Mr. CASTRO. So you would agree that it is going in the right direction?

Ms. DRAKE. It is going in the right direction, but it is a weak tool because it involves sort of diplomatic relationships and there is no sort of hard penalty that puts in place immediately, but it highlights promises and it does put pressure on countries to comply. It is just that it is a slow process. But we encourage it to get stronger and stronger.

Mr. CASTRO. And I guess that is what I am trying to get to the bottom of. There is sometimes a difference between what you have on paper and what happens in practice. So my question is essentially about the gap there. But you know, I take the point to heart about the trade deficit although I do think you have got to ask yourself the question about both parties, do both parties do better even though you may be buying more of their stuff than they are of yours, do both parties do better by the agreement? I think that is something that we struggle with.

The reason I ask the labor question is because what we have seen over the years is America losing jobs to other countries, places where workers can be paid essentially a pittance for their work. We have got to improve the labor conditions and the working conditions and really the wage conditions in other countries if we are going to be successful in keeping American jobs in America. And so I see that as an opportunity in these agreements and really it is something that should be fundamental to them. I don't think that we can be shut off from the rest of the world. I do think that we need to engage other countries in trade, but I do think that the agreement should be done in a useful way that accomplishes also making sure that American workers are able to compete fairly against people in other countries.

If you all have any comments on anything I have said?

Mr. GERWIN. Yes, Congressman Castro, a couple of things. First of all, I would like to address the question of our trade deficit which has been discussed. If you look at our agreements with free trade agreement countries, we actually have manufacturing goods, services goods, and ag goods surpluses with those countries. The reason we, for example, have mostly trade deficits with Canada and Mexico is because we import a lot of oil from those countries.

The real drivers of our trade deficits are China, a country that we don't have a free trade agreement with, and petroleum. So I think when we are talking about free trade agreements and deficits, I think it is important to drill down and see the effects that the agreements themselves have.

Mr. CASTRO. So your point is that in certain sectors or industries, we are actually coming out ahead?

Mr. GERWIN. Yes, I mean if you look at manufacturing services and ag. and you aggregate our free trade agreements historically, we are doing well. So I think that is important. And I will reiterate the other point. I think it is very important for us to get the highest possible labor standards and environmental standards that we can get in these agreements and one of the things the TPP could help us do is go back and perhaps improve the agreements that we have, the side agreements we have with Canada and Mexico, now that they are part of the TPP.

Mr. METALITZ. If I could just add one point to what Mr. Gerwin said on the first point? If you look at the sectors that depend on copyright protection on books, on music, on publishing, on software, these are big exporters, \$130 billion in foreign sales and exports, far bigger than many manufacturing industries, for example. And that has continued and if we can get stronger protections in these countries, we are going to be exporting more and we are going to be creating more jobs in the United States in all of those industries. So I think they get to look at it on a sector—

Mr. CASTRO. Just to make a final comment on that, Chairman, last week and several of us were in Los Angeles. Lucille Roybal-Allard, a congresswoman from Los Angeles, led a discussion with the Motion Picture Association and former Senator Dodd who now heads up that organization was there and he was talking about the very extensive problem that you have with piracy in China and in other countries, so I hear you on that.

Mr. POE. The gentleman's time has expired. I will yield myself 5 minutes. We are in the process of votes. We will try to finish before the voting process because it is going to be a long process.

Mr. Gerwin, you mentioned something about oil. I realize that oil, exporting into the United States, affects the overall trade deficit of the United States because we import so much oil. How much is it? The trade deficit made up of importing crude oil is what percentage?

Mr. GERWIN. You know, I don't know the precise number, Congressman, but I think it is about a third.

Mr. POE. Does anybody else want to weigh in on that?

Mr. GERWIN. We did a study when I was at Third Way and I think if you called oil its own country, I think it would be like our number three trade deficit country.

Mr. POE. Hopefully, we will change that and become an exporter, especially of natural gas. That is a different issue however.

Four of these countries are on the intellectual property watch list which means that we are watching them. Should we include them in the TPP, especially Vietnam as pointed out they have got some other issues. They don't treat their own people right. They have got human rights violations, international trafficking. Should we just exclude those four or should we try to do something with them?

Mr. Metalitz?

Mr. METALITZ. Yes, those countries, I think it is important that those countries be involved in the TPP, but I think the fact that they are on the watch list and in one case on a priority watch list from USTR is significant and it raises issues that need to be addressed in the TPP negotiations.

Chile is on the priority watch list. We signed a free trade agreement with Chile that had very strong copyright provisions and they simply have not implemented many of them and that is setting a terrible example for our future TPP partners. They may be thinking well, we can sign up—

Mr. POE. Let me interrupt just for a second. So they don't agree. They are still violating the rules. They are cheating. And so what are we doing? Saying woe is me or taking them to the international court? What are we doing?

Mr. METALITZ. Well, there are steps that could be taken under our free trade agreement.

Mr. POE. Are we doing anything?

Mr. METALITZ. I don't think we are doing enough. It is a source of frustration—

Mr. POE. I am going to have to ask a lot of questions here. Our negotiators, are they good negotiators? Are diplomats negotiating this or do we have some horse traders in there fighting for America? I am serious about this. As the ranking member has pointed out, we go in to these agreements and all of a sudden we find out maybe we didn't get the best deal and then we come back and we show it to the American public and it is a done deal and it is a deal.

I am asking your opinion of the negotiators for the United States. It is an opinion. Everybody has got an opinion.

Ms. Drake?

Ms. DRAKE. If I may, we would like to see USTR do a lot better. For instance, we think that in the Korea FTA it was a huge mistake to let that 35 percent regional value content go for automobiles. That left jobs on the table and USTR could have done a heck of a lot better. And we have meetings with USTR fairly regularly. As I said, they do have an open-door policy and we are constantly saying we need you to really go after rules of origin, market access commitments, reciprocal market access commitments that get good jobs for Americans. And as was mentioned, allow workers in other countries to have rights that they can raise their own wages.

Mr. GERWIN. Mr. Chairman, I think we also need more of them, too.

Mr. POE. More negotiators?

Mr. GERWIN. More negotiators. Ambassador Froman has said that the serious budget issues that USTR has makes it difficult for them to go and do some of the kinds of assessments they need to do in foreign countries to determine whether those countries are actually violating things like intellectual property rights.

We only have 200 plus people at USTR. It has a lot of responsibility and I think they need some more resources.

Mr. POE. Would you recommend, the four of you, as I am nearly out of time that Congress, this committee, make a list of rec-

ommendations that we put on the table to make sure we think these are the best in America's interest to go after them on these issues. Let us make this part of the deal, while it is still in flux and it hasn't been signed yet. Would you agree with that, yes or no. I will just go down the list?

Mr. GERWIN. Yes.

Mr. METALITZ. Yes.

Mr. SHEHATA. No.

Ms. DRAKE. Yes.

Mr. POE. Okay, why no? Why do you think Congress should—

Mr. SHEHATA. I'm going to wrap my answer in the question you asked earlier in regards to are they doing the best job they possibly can? I think they have been engaged for 3½ years. They have learned the issues. They have America's interest in mind. They are trying to take our core beliefs and instill them in a number of countries through an agreement that has discipline on getting them to where we need to go.

So my answer of no is we need to give them more horsepower, but we need them to be able to achieve what we ask them to do.

Mr. POE. And as Ms. Drake said, not rush through this, but get it done right, rather than just get it done.

Last comment, just brief answer from one of you on the state-owned enterprises. I am very concerned about these state-owned enterprises competing with Americans because they seem to cheat. Should this be a bigger issue? Should we emphasize this more in the TPP negotiations that we want—they have to go by the same rules, even though they are state-owned enterprises, yes or no?

Mr. GERWIN. Absolutely. We are certainly concerned with how the governments operate state-owned enterprises, especially in terms of respecting intellectual property. That is essential.

Mr. POE. Okay.

Mr. SHEHATA. Critical, definitely very important.

Ms. DRAKE. It is a critical issue.

Mr. POE. Okay, thank you. I thank all four of you. I see that Mr. Rohrabacher is here. I will stay if the other members want to go on the House floor.

And Mr. Rohrabacher, do you want to ask some questions?

The question is, Mr. Rohrabacher, do you want to ask any questions?

Mr. ROHRABACHER. Yes, I do. Thank you, Mr. Chairman.

Mr. POE. You have 5 minutes.

Mr. ROHRABACHER. I have 5 minutes, all right. I was just noting again as some of the other members did that we have Vietnam right in the middle there of all these other countries and there are some questionable political institutions or lack of institutions in some of these countries, but Vietnam is an out-and-out dictatorship. It is the dictatorship of the proletariat. You go there and they are still talking that stupid way.

Is there some notion that we are going to be more successful in Vietnam that by trading with them they are going to become a freer society? That didn't work in China, did it? China isn't any more democratic today than it was—in fact, some people think it is less democratic today because they are using our computers to track down their dissidents. Is this just another mistake in an idea

that we are going to make them more liberal by trading with them, the old hug a Nazi, make a liberal theory? [Laughter.]

Does anybody want to tackle that?

Mr. GERWIN. Well, Congressman, there is a difference between what we are proposing to do with Vietnam and what we have done with China. We have traded more with China. What we are proposing to do with Vietnam is to make them sign up to a whole bunch of new commitments including things like labor and the environment and rule of law and notice of process rulemaking, all of that. And if they are not willing to sign up to that, they are not going to do an agreement with us. And I think those kinds of deeper commitments can be helpful. A big slog, I understand that.

Mr. ROHRABACHER. I think if you really dig down, you are going to find out that countries like Vietnam, governments like Vietnam, actually have constitutions. They have signed on to it with their people and then they don't pay any attention to it whatsoever. I mean the Soviet Union had a wonderful constitution. Signing on isn't the point. Actually, it is enforcing something that somebody signed on and I see our representative from labor is shaking her head. Maybe you can tell us do we enforce, do we have a history of enforcing these types of agreements once we have got countries like Vietnam under signature?

Ms. DRAKE. Not strongly enough. For example, we have been told for years that signing countries up will exactly as you say, will liberalize, will improve human and labor rights conditions, et cetera, et cetera. What we found particularly with the CAFTA countries is that labor rights have been degraded. The same is true in Mexico and in many other countries and we are afraid that just sort of signing Vietnam up might lead us to a situation that is similar to Colombia where there is a labor action plan, there are commitments for what is going to be better, but the real day-to-day rights for workers change very little, if at all.

Mr. ROHRABACHER. Is there a right to strike? Is there a right to strike in Vietnam? Do people have a right to strike in Vietnam?

Ms. DRAKE. There is not. It is illegal.

Mr. LOWENTHAL. Only dissidents.

Mr. ROHRABACHER. That is right. You know, years ago when I was a young man which is many, many years ago when I was 19 I spent some time in the Central Highlands of Vietnam. I was not in the military, but I was with the Montagnards up there and I couldn't help but note that there are 350 Montagnards right now being held in prison because they are evangelical Christians. They have managed to be converted to Christianity.

I just can't imagine that it is consistent with our values that we are going to declare that a country that holds 350 people and that is just these Montagnard Christians, they hold other religious people in prison, that we are going to lump them in with other free countries as if there is no difference in our relationship between New Zealand and this communist dictatorship that still tries to stamp out people's belief in God. I just can't believe we just ignore that fundamental fact that is staring us in our face.

I think that the decisions we have, Mr. Chairman, are more than economic decisions. We are defining ourselves to the world as to what we believe most and if we believe that like we have been

dealing with China that just making money is the only thing that America is all about I just don't think that people will respect us and we won't be any more prosperous or safe because of it. Thank you very much.

Mr. POE. I thank the gentleman. I want to thank all four of you for being here. There will be more questions in writing submitted to you from members of the panel, just so you know they are coming. Don't take a long time in answering them. So without objection, all members may have 5 days to submit statements, questions, extraneous materials for the record, subject to the length limitation in the rules of this committee and the committee is adjourned. Thank you again.

[Whereupon, at 2:38 p.m., the subcommittee was adjourned.]





## A P P E N D I X

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**SUBCOMMITTEE HEARING NOTICE**  
**COMMITTEE ON FOREIGN AFFAIRS**  
U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515-6128

**Subcommittee on Terrorism, Nonproliferation, and Trade**  
**Ted Poe (R-TX), Chairman**

**TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS**

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs to be held by the Subcommittee on Terrorism, Nonproliferation, and Trade in Room 2200 of the Rayburn House Office Building (and available live on the Committee website at [www.foreignaffairs.house.gov](http://www.foreignaffairs.house.gov)):

**DATE:** Thursday, August 1, 2013

**TIME:** 1:30 p.m.

**SUBJECT:** The Trans-Pacific Partnership: Outlook and Opportunities

**WITNESSES:** Mr. Edward F. Gerwin, Jr.  
President  
Trade Guru LLC

Mr. Amgad Shehata  
Vice President  
International Public Affairs  
United Parcel Service

Mr. Steven Metalitz  
Counsel  
International Intellectual Property Alliance

Ms. Celeste Drake  
Trade and Globalization Policy Specialist  
The American Federation of Labor and Congress of Industrial Organizations

**By Direction of the Chairman**

*The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.*

## COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON Terrorism, Nonproliferation, and Trade HEARINGDay Thursday Date August 1 Room 2200Starting Time 1:30 Ending Time 2:38Recesses ☐ (\_\_\_\_ to \_\_\_\_ ) (\_\_\_\_ to \_\_\_\_ ) (\_\_\_\_ to \_\_\_\_ ) (\_\_\_\_ to \_\_\_\_ ) (\_\_\_\_ to \_\_\_\_ ) (\_\_\_\_ to \_\_\_\_ )

Presiding Member(s)

*Rep. Ted Poe*

Check all of the following that apply:

Open Session ☒Electronically Recorded (taped) ☒Executive (closed) Session ☐Stenographic Record ☒Televised ☒

TITLE OF HEARING:

*The Trans-Pacific Partnership: Outlook and Opportunities*

SUBCOMMITTEE MEMBERS PRESENT:

*Reps. Poe, Castro, Lowenthal, Wilson, Kinzinger, Cook, Perry, Cotton, Sherman, Schneider, Kennedy*

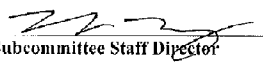
NON-SUBCOMMITTEE MEMBERS PRESENT: (Mark with an \* if they are not members of full committee.)

*Rep. Rohrabacher*HEARING WITNESSES: Same as meeting notice attached? Yes ☒ No ☐  
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: (List any statements submitted for the record.)

TIME SCHEDULED TO RECONVENE \_\_\_\_\_

or

TIME ADJOURNED 2:38  
Subcommittee Staff Director



August 2, 2013

The Honorable Ted Poe  
 Chairman  
 Subcommittee on Terrorism, Nonproliferation, and Trade (House Foreign Affairs)  
 2412 Rayburn Building  
 Washington, D.C. 20515

Dear Chairman Poe:

On behalf of the 2,100 Members that comprise the Greater Houston Partnership (GHP), we are writing to express our support for the Trans-Pacific Partnership (TPP) agreement as it moves to increase trade and investment among the TPP countries and promotes existing trade relationships, economic development, and the creation and retention of jobs in the U.S.

In Houston, more than 3,000 firms and organizations trade more than 259 types of products and services in 17 regions around the world. The Asia-Pacific region represents a unique opportunity for U.S. business, including the middle market and small businesses working to grow their companies at home through increased exports. The proposed legislation would help increase the quantity and quality of exports to the Asia-Pacific region, which would contribute significantly to additional job growth and economic growth.

Houston is a global city with increasing business interest around the world. In fact, in 2012, according to the International Trade Administration, the Houston Metropolitan Area was rated the top exporter in the country, with \$110.36 billion of goods shipped abroad. The Partnership believes that this agreement will stimulate trade for our region with our top existing trading partners and assist in forging new trade relationships that will facilitate business growth and job creation.

We look forward to working with you and the members of the committee to advance the TPP and other important issues that maintain a global trade environment and fuel the U.S. economy.

Regards,

A handwritten signature in cursive script that reads "Bob Harvey".

Bob Harvey  
 President and CEO

cc: Rep. Brad Sherman  
 cc: Rep. Joe Wilson  
 cc: Rep. Adam Kinzinger  
 cc: Rep. Mo Brooks  
 cc: Rep. Tom Cotton  
 cc: Rep. Paul Cook  
 cc: Rep. Scott Perry

cc: Rep. Ted S. Yoho  
 cc: Rep. Alan S. Lowenthal  
 cc: Rep. Joaquin Castro  
 cc: Rep. Juan Vargas  
 cc: Rep. Bradley S. Schneider  
 cc: Rep. Joseph P. Kennedy III

## TESTIMONY OF FORMER CONGRESSMAN ANH “JOSEPH” CAO

DATE: AUGUST 1, 2013

TOPIC: THE TRANS-PACIFIC PARTNERSHIP: OUTLOOK AND  
OPPORTUNITIESCOMMITTEE/SUBCOMMITTEE: SUBCOMMITTEE ON TERRORISM,  
NONPROLIFERATION, AND TRADE

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Chairman Poe and distinguished members of the Subcommittee:

I thank you for the opportunity to submit my testimony for the Congressional record of this hearing. This hearing comes at an opportune time: on the heels of the Vietnamese President's visit to the White House last week, where he discussed the Trans-Pacific Partnership (TPP) with our President.

Mr. Chairman, the principles of religious liberty, freedom of expression, freedom of conscience, freedom to organize, and the freedom to own property have served as the bedrock of our great nation for over two centuries. Not only do we defend our citizens against those internal forces that seek to suppress these freedoms, we fought and have given our lives to defend these freedoms against foreign nations that threaten to destroy these values. Since the inception of our great nation, we have demanded of ourselves that these freedoms must be preserved at all cost, and we demand the same from those nations with whom we associate. The policies of our country have been clear in prohibiting the United States from providing aid to those countries that have had a history of human rights violations, especially when such violations were inflicted against the citizens of this country.

To make this story short, Vietnam's violation of the rights of a class of US citizens began after the fall of Saigon in 1975. When Communism took over Vietnam in late April of 1975, some 145,000 South Vietnamese who fought alongside the U.S. military during the Vietnam War fled to the sea. Most of them were picked up by the U.S. Seventh Fleet and brought to Guam. From there they were resettled to different parts in the United States. After the take-over, the Communist Regime forcibly arrested and sent hundreds of thousands of former allies of the United States—both military personnel and civilian government officials—to “re-education” camps, a euphemism for forced labor camp where detainees were tortured, and many were summarily executed. After evicting these detainees from their homes and properties, the government then occupied these lands that were left vacant by its acts. In addition, the Government of Socialist Vietnam evicted hundreds of thousands of South Vietnamese city dwellers from their homes and properties and sent them to the “New Economic Zones” (NEZ), where tens of thousands died of malaria and starvation. Left vacant, their land and homes were occupied by government units or officials of the Communist Regime.

Between 1976 and 1988, over a million Vietnamese fled Communist persecution, primarily by sea (they are thus known as the “Boat People”) but also by crossing Cambodia's Killing Fields, leaving behind their real property. Hundreds of thousands are estimated to have died during their escape. Survivors stayed in refugee camps throughout Southeast Asia and in a number of Asian countries. Their homes and land, left vacant, were occupied by government officials or agencies. Many of these Boat People later resettled in the United States and became US citizens.

Responding to the large number of real estates obtained from forced evictions and from people who had no choice but to flee persecution and establish a safe, new life in foreign lands, the Socialist Republic of Vietnam issued Executive Decision 111/1977/CP on April 14, 1977, to place the properties

under temporary state administration. The Executive Decision, in pertinent part, states: “All residential housing, land and properties absent of owners who are Vietnamese or foreigners are directly administered by the government. When these owners return, the government will resolve [the matter] with them. No one may unilaterally expropriate, transfer ownership, sell or buy residential housing or properties in the absence of their owners without authorization of the government agencies with proper jurisdiction.”<sup>1</sup> In 1980, the SRV declared for the first time through its December 18, 1980, Constitution that “land belongs to the entire people with the State as the representative owner,” thereby declaring in principle its policy to nationalize all land. On December 29, 1987, the National Assembly promulgated Vietnam’s Land Law to implement this new policy, placing all land under the people’s collective ownership and the government’s administration. This Land Law did not address the real property belonging to those who had left the country and being placed under direct State administration. In a communique dated November 11, 1989, to the Chairman of the People’s Committee of Ho Chi Minh City, Deputy Prime Minister Nguyen Huu Tho, asserted that direct State administration of real properties left vacant by those who had fled the country was only a temporary measure, and that only the People’s Court may strip a person of his/her ownership of real estate, which was allegedly protected by the Constitution. The 1992 Constitution again reasserted the government’s role in the administration of all land, and the government’s power to assign land use rights to individuals and entities. It also reasserted the right of inheritance of privately owned property. On July 14, 1993, the Vietnamese National Assembly passed a new Land Law declaring that the government will not return land to its owners once that land had been assigned to other entities. The new provision effectively repealed all previous laws that regulated land ownership and land use, and essentially nullified private ownership of land left vacant by those who had fled the country.

The expropriation of privately owned real property culminates in the 2003 Land Law (13/2003/QH11) with the accompanying Resolution 23/2003/QH11 that repealed all laws addressing lands and residential housing administered by the State pursuant to policies predating July 1, 1991—the date the Ordinance on Residential Housing took effect. The law authorized the government to spurn any claim for the return of land or residential housing already placed under State administration prior to July 1, 1991. The Resolution thus nullified Executive Decision 111/1977/CP about returning land and residential homes to Vietnamese expatriates who may want to return to Vietnam to reclaim their properties. The 2003 Land Law officially completed the process of nationalizing all land and housing under the administration of the State.

22 U.S.C § 2370 is explicit in its prohibition against the granting of assistance to countries that have nationalized, expropriated or seized property of U.S. citizens, especially countries with Communist ties. The statute mandates, in pertinent parts:

*(e) Nationalization, expropriation or seizure of property of United State citizens, or taxation or other exaction having same effect; failure to compensate or to provide relief from taxes, exactions, or conditions; report on full value of property by Foreign Claims Settlement Commission; act of state doctrine*

*(1) The President shall suspend assistance to the government of any country to which assistance is provided under this chapter or any other Act when the government of such country or any government agency or subdivision within such country on or after January 1, 1962—*

*(A) has nationalized or expropriated or seized ownership or control of property owned by any United States citizens or by any corporation, partnership, or association not less than 50 per centum beneficially owned by United States citizens, or association not less than 50 per centum beneficially owned by United States citizens, or ...*

<sup>1</sup> The original document is in Vietnamese. The pertinent part has been translated by those who are proficient in both English and Vietnamese.

*(f) Prohibition against assistance to Communist countries; conditions for waiver of restriction by President; enumeration of Communist countries; removal from application of provisions; preconditions*

*(1) No assistance shall be furnished under this chapter, (except section 2174 (b) of this title) to any Communist country. This restriction may not be waived pursuant to any authority contained in this chapter unless the President finds and promptly reports to Congress that:*

*(A) such assistance is vital to the security of the United States;*

*(B) the recipient country is not controlled by the international Communist conspiracy;  
and*

*(C) such assistance will further promote the independence of the recipient country from international communism. For the purposes of this subsection, the phrase "Communist country" includes specifically, but is not limited to, the following countries:*

*Democratic People's Republic of Korea,  
People's Republic of China  
Republic of Cuba,  
Socialist Republic of Vietnam,  
Tibet.*

*(2) Notwithstanding the provisions of paragraph (1) of this subsection, the President may remove a country, for such period as the President determines, from the application of this subsection, and other provisions which reference this subsection, if the President determines and reports to the Congress that such action is important to the national interest of the United States. If it is the sense of the Congress that when consideration is given to authorizing assistance to a country removed from the application of this subsection, one of the factors to be weighed, among others, is whether the country in question is giving evidence of fostering the establishment of a genuinely democratic system, with respect for internationally recognized human rights . . . . 22 U.S.C. § 2370(e) & (f), emphasis added.*

The Trade Act of 1974, (19 USC 2462(b)(2), requires that a beneficiary of the Generalized System of Preferences "may not have nationalized, expropriated or otherwise seized property of U.S. citizens or corporations without providing, or taking steps to provide prompt, adequate, and effective compensation, or submitting such issues to a mutually agreed forum for arbitration."

Mr. Chairman, the Socialist Republic of Vietnam has failed to take appropriate steps to discharge its obligations under widely accepted general principle of international law to fully compensate the Plaintiffs for properties unlawfully nationalized or expropriated. To make matters worse, the Socialist Republic of Vietnam has failed to foster the establishment of a genuinely democratic system, and respect for internationally recognized human rights, including the right to own property, right to political speech/expressions, right to freely practice any religion or belief, and the right to life for its own people.

Furthermore, U.S. policy towards the Socialist Republic of Vietnam has correlated to an increase in repression since early 2007. During his attendance of the APEC Summit held in Ha Noi on Nov 16-19, 2006, President George W. Bush announced his intention to take the Socialist Republic of Vietnam off the list of Countries of Particular Concern, a designation for countries with a record of gross suppression of religious freedom. The following month, the U.S. government accorded the Socialist Republic of Vietnam Permanent Normal Trade Relations status with the US (Dec 12, 2006). With the support of the U.S. government, the Socialist Republic of Vietnam gained accession to the

WTO on Jan 11, 2007. Almost immediately thereafter, the Vietnamese government launched a brutal crackdown against the pro-democracy movement. The Human Rights Watch criticized the SRV: "The Vietnamese government, emboldened by international recognition after joining the World Trade Organization and hosting the Asia-Pacific Economic Cooperation summit, is flouting its international commitments on human rights by launching one of the worst crackdowns on peaceful dissidents in 20 years." (Vietnam: Crackdown on Dissent in the Wake of WTO and APEC, Human Rights Watch, March 10, 2007). The crackdown, which is on-going, has resulted in the arrest or detention of over a hundred dissidents, including religious leaders, well known writers, labor union organizers, social justice advocates and Nobel Peace Prize nominees. As part of this wave of repression, the Socialist Republic of Vietnam has aggressively expropriated land from religious communities, including the Catholics, the Montagnard Protestants and Catholics, the Hmong Protestants, and the Khmer Krom Buddhists.

Mr. Chairman, considering the egregious acts inflicted on US citizens and the citizens of Vietnam, I oppose Vietnam's inclusion into the Trans Pacific Partnership at this time for the following reasons:

- A) Membership in the TPP for governments that systematically violate fundamental human rights will be regarded – by the governments themselves, by the people of their countries, and by the world at large – as a vote of confidence. It will reinforce the message we already send in too many ways that such behavior imposes no important costs on governments: that it is unacceptable in theory but not in practice. In the case of Viet Nam, this message will be particularly unfortunate. In the last few months the government has staged some 50 show trials of people whose only crime was to criticize the regime, or to show patriotism toward their own country. One of these trials involved a young female, Nguyen Phuong Uyen, whose only crime was to question Vietnam's concession of disputed land to China.
- B) In terms of labor rights, forced labor is still practiced in rehab centers and in prisons. Prisoners, including political prisoners, are forced to process cashews and seafood products for export. Labor trafficking under the national labor export program has grown in number and severity, including the trafficking of women to work as sex slaves. Migrant workers continue to be prohibited from joining labor unions even in destination countries. They are now discouraged from seeking help from NGOs that have not been vetted by the Vietnamese government. At any given time hundreds of thousands of inmates are subjected to forced labor throughout Vietnam. America imports a large volume of cashews from Vietnam, and Vietnam ranks as the second largest apparel exporter to the U.S. with exports totaling \$7 billion a year.

According to Boat People SOS, a respectable national organization with operations throughout the United States and in three Asian countries, its Bangkok-based legal team has discovered, through interviews with Vietnamese asylum seekers in Thailand, that political prisoners and other prisoners of conscience have also been subjected to exactly the same type of forced labor. One Montagnard, jailed from 2002 through 2009, had to do this for 7 years. His hands were eaten by the acid from the cashew nuts because he was not allowed to use gloves. Another Montagnard jailed from 2005 until 2009 at Dai Binh Prison in Lam Dong described prisoners being divided into production teams (cashew production, farming, vegetation, packaging fish for exporting). Those failing to meet quota were beaten with a whip and kicked. A Vietnamese dissident sentenced to 2.5 years in prison for promoting democracy over the internet and for distributing leaflets was required to break cashew shells during his incarceration at the Z 30A Xuan Loc prison. His quota was about 22 kilograms per day. Human Rights Lawyer Nguyen Van Dai, a recently released prisoner of conscience,



also reported the wide use of forced labor in prison to manufacture products that were then exported to Western countries. Until and unless government-sponsored forced labor and labor exploitation ceases in Vietnam, the TPP would certainly encourage its government to increasingly use forced labor and labor exploitation to increase profits at the expenses of U.S. businesses and workers.

- C) Prisoners of conscience in Viet Nam are falsely accused and convicted on bogus charges because they attempted to organize independent labor unions, or advocate for the rights of workers to organize. These prisoners of conscience include Doan Huy Chuong, Nguyen Hoang Quoc Hung, and Do Thi Minh Hanh, as well as others who attempted to exercise their fundamental right to freedom of association, such as Nguyen Van Hai (Dieu Cay), the founder of the "Free Journalists Club". It would be particularly inappropriate to reward a government that imprisons people for exercising these rights with membership in an association whose whole reason for being is openness, transparency, and freedom of movement for goods and persons.
- D) The idea that dictatorial governments will improve their human rights practices after being granted TPP is not only counter-intuitive but also flies in the face of decades of experience in dealing with the governments of China and other countries. Once democratic nations give up their leverage and confer benefits that enrich and empower the undemocratic governments, the latter have no incentive to reform. The argument that expanded trade will bring about human rights improvements has not worked for Vietnam. Since the BTA trade between US and Vietnam has increased by more than 1,000% (from 2.4 billion in 2001 to 25 billion in 2012). However, in that period of time, human rights violations have steadily become aggravated. The gradual backsliding started in 1998. The situation appeared to improve in 2005 and 2006 due to the CPC designation. In 2007 the government launched a brutal and massive crackdown which lasts to this day. Today, Vietnam is the worst violator of human rights of all the countries in Southeast Asia.
- E) It is also important to notice the enormous difference between free trade with countries with entrepreneurial free-enterprise systems and those whose economies are dominated by state-owned companies and/or "joint ventures" involving such companies. American workers and small businesses are productive enough to compete on a level playing field with their genuine counterparts in other countries, but the field is not level when it's workers and businesses on one side and governments on the other.
- F) Finally, although the TPP negotiations up to this point have been anything but transparent, it appears that Viet Nam and other potential TPP members have been given a series of "red lines" – anticompetitive practices in which they currently engage that are unacceptable to U.S. business interests and which these governments will therefore have to stop in order to become members of TPP. It is hardly unreasonable to suggest that these "red lines" should include a demand for the immediate release of labor activists, independent journalists, and others whose crimes consisted only in attempting to exercise internationally recognized human rights.

I urge this Congress to exclude Vietnam from the Trans-Pacific Partnership until and unless all these prisoners have been unconditionally released. Otherwise, we may be unintentionally encouraging the Vietnamese government to escalate human rights violations on the belief that it can do so with practical impunity. Furthermore, Viet Nam should allow migrant workers to join local labor unions in destination countries, start to investigate labor export companies implicated in labor trafficking, give domestic and international NGOs full access to victims of labor trafficking, end the practice of forced labor, set free prisoners of conscience particularly labor union organizers, and enable the

formation of independent watchdog groups to ensure proper implementation of **TPP** provisions once and if Viet Nam joins it.

I believe that my statement and position reflects the sentiments and views of Vietnamese-Americans from across the country. As a matter of fact, on June 4 some 800 Vietnamese-American community leaders from 30 states came to the Capitol to speak to their members of Congress about the need to precondition expansion of trade with Vietnam on improved human rights in that communist country. I hope that the voices of these Vietnamese-American leaders do not fall on deaf ears. I hope that the principles that have made us a great nation do not fall on deaf ears.

Once again, I would like to thank the Chairman and esteemed members of this Subcommittee for the opportunity to submit my statement into the record in lieu of testimony.

## Montagnard Prisoners

### Partial list As of February 2012

(Primary sources: BPSOS and Montagnard Human Rights Organization)

#### Synopsis:

Montagnards have long been subjected to harsh treatment by the government of Viet Nam for a number of reasons including traditional prejudice against ethnic minorities; distrust of the Montagnards' fervent Christianity, which many in the government consider a subversive "American" religion; hostility on account of the close association of many Montagnards with the United States war effort prior to 1975; and an ongoing policy by the government to resettle ethnic Vietnamese from the North in the Central Highlands on lands confiscated from Montagnards.

In recent years this mistreatment has intensified. Between 2001 and 2004, the Vietnamese government shut down or destroyed over four thousand Montagnard house churches in the Central Highlands, and vigorously seized the ancestral lands of the Montagnards, hence in most cases depriving them of their only means of livelihood and further disrupting their religious lives. This repressive policy prompted mass demonstrations by the Montagnards in 2001, 2002, 2004 and 2008.

*"...in February 2001, unprecedented mass protests broke out in all four provinces of the Central Highlands. Thousands of Montagnards marched on the provincial towns to demand the return of ancestral lands and religious freedom.*

*In response, the government launched an aggressive crackdown, dispatching military and police units to seal off the region and arresting dozens of Montagnards, sometimes using torture to elicit confessions and public statements of remorse.*

*...In April 2004 thousands of Montagnards again took to the streets, with smaller protests taking place in September 2002 and April 2008.*

*...Elite security units have hunted down and arrested Montagnard activists in hiding and sealed off the border with Cambodia to prevent asylum seekers from fleeing the country.*

*During these crackdowns, authorities have committed clear-cut violations of fundamental rights, including arbitrary arrest, imprisonment, and torture. Officials have employed coercion to pressure Montagnards to renounce their religion and pledge their loyalty to the government and the Communist Party of Vietnam. Police have used excessive force to dispel largely peaceful protests, resulting in the deaths of as many as eight Montagnards during demonstrations in April 2004 as well as injuries and deaths of others during arrest and in police custody..."* ("Montagnard Christians in Vietnam, A Case Study in Religious Repression," Human Rights Watch, 2011)

In 2004 the United States designated Vietnam as a Country of Particular Concern (CPC) but removed the designation two years later despite the continued imprisonment of Montagnards who were involved in the peaceful demonstrations of 2001, 2002 and 2004. The Vietnamese government again cracked down on the 2008 demonstration and arrested numerous participating Montagnards. Since 2009, the state news media has reported that at least 15 Montagnards had been tried and

sentenced to up to 12 years imprisonment for “undermining national unity.” The government has recently increased repression of the Montagnards, closing house churches, compelling public renunciations of faith and arresting worshipers.

Below is a partial list of Montagnards imprisoned for taking part in the demonstrations in 2001-2008. Most of them were charged according to the following articles in the Vietnamese Criminal Code (VCC):

- § 87: Undermining the national unity
- § 89: Causing public disorder
- § 91: Fleeing abroad to oppose the People’s Government
- § 257: Resisting officers in the performance of their duties

Note: Information on the sentence may vary in some cases. The alternative information is placed in square brackets.

No	Full Name	Year of arrest	Province	Sentence (Years)	Prison last known
1	Y Thuan Nie	2001	Dak Lak	10	Ha nam
2	Y Tuan Bya	2001	Dak Lak	11	Ha nam
3	Y Wang Nie kdam	2001	Dak Lak	4	Ha Nam
4	Y Rin Kpa	2001	Dak Lak	10	Ha Nam
5	Y Nuen Buonya	2001	Dak Lak	11	Ha Nam
6	Y Mriu Eban	2001	Dak Lak	6	Ha Nam
7	Y Muk Nie	2001	Dak Lak	5	Ha Nam
8	Y Nuen Nie	2001	Dak Lak	2	Ha Nam
9	Y Bhiot Ayun	2001	Dak Lak	3	Ha nam
10	Ksor Sun	2001	Dak Lak	2	Ha Nam
11	Y Nok Mlo	2001	Dak Lak	8	Ha nam
12	Y Bhiet Nie	2001	Dak Lak	6	Ha Nam
13	Y Druk Nie	2001	Dak Lak	7	Ha Nam
14	Y Phen Ksor	2001	Dak Lak	7	Ha Nam
15	Siu Sop	2001	Dak Lak	6	Ha nam
16	Y Khu Nie	2001	Dak Lak	5	Ha Nam
17	Y Tum Mlo	2001	Dak Lak	8	Ha Nam
18	Y Suan	2001	Dak Lak	Unknown	Died in prison
19	Y Kao Buonya	2001	Dak lak	7	Ha Nam
20	Y Tim Eban	2001	Dak lak	8	Ha nam
21	Y Are Nie	2001	Dak Lak	8	Ha Nam
22	Y Boh Nie	2001	Dak Lak	8	Ha nam
23	Y Tien Nie	2001	Dak Lak	8	Ha nam
24	Y Nai Mlo	2001	Dak Lak	8	Ha nam
25	Y Pum Bya	2001	Dak lak	8	Ha nam
26	Y Thomas Eya	2001	Dak Lak	8	Ha Nam
27	Y Coi B.Krong	2001	Dak Lak	8	Ha Nam
28	Y Lem B.Krong	2001	Dak Lak	8	Ha Nam

29	Rahlan Loa	2001	Dak Lak	9	Ha nam
30	Y Thim Bya	2001	Dak lak	10	Ha nam
31	Y Ju Nie	2001	Dak Lak	8	unknown
32	Y Klah Bya	2001	Dak Lak	Unknown	Phu Yen
33	H' Boc Eban	2001	Dak Lak	3	Ha Nam
34	Y Grong	2001	Dak Lak	3	Ha nam
35	Y Ngul	2001	Dak Lak	Unknown	Ha Nam
36	Y Bri Enuol Released	2001	Dak lak	10	Ha Nam
37	Y Kro Nie	2001	Dak Lak	5	Ha Nam
38	Y He Eban	2001	Dak Lak	12	Ha Nam
39	Y Bhi Bya	2001	Dak Lak	7	unknown
40	Y Dham Knul	2001	Dak Lak	5	unknown
41	Y Cuan Rcam	2001	Dak Lak	5	unknown
42	Lat	2001	Dak Lak	7	Ha Nam
43	Y Kroi B.krong	2001	Dak Lak	7	unknown
44	Y Kua Bya	2001	Dak Lak	13	Ha Nam
45	Y Hoen	2001	Dak Lak	7	unknown
46	Y Oal Nie	2001	Dak Lak	5	Ha Nam
47	Y Kim Enuol	2001	Dak Lak	7	unknown
48	Jon Enuol Released	2001	Dak Lak	11	Ha Nam
49	Y Lia Nie	2001	Dak Lak	7	Ha Nam
50	Y Ku Nie	2001	Dak Lak	Unknown	Ha Nam
51	Siu Je	2001	Dak Lak	7	unknown
52	Ksor Phom	2001	Dak lak	Unknown	Ha Nam
53	Y Su	2001	Dak Lak	Unknown	unknown
54	Y Brik Bya	2001	Dak Lak	Unknown	Unknown
55	Y Kao Nie	2001	Dak Lak	Unknown	unknown
56	Ama Phi	2001	Dak Lak	Unknown	unknown
57	Ksor Y Hoi	2001	Dak Lak	Unknown	unknown
58	Ksor Y Lak	2001	Dak lak	Unknown	Ha Nam
59	Y Nguyen kdoh	2001	Dak Lak	8	unknown
60	Y Som Hmok	2001	Dak Lak	6	Ha nam
61	YBllet Ayun	2001	Dak Lak	5	Ha Nam
62	Ama Gam	2001	Dak Lak	5	Ha Nam
63	Ama Hngem	2001	Dak Lak	Unknown	Unknown
64	Dieu Rais	2001	Dak Nong	Unknown	Dak Nong
65	Rmah Djoan	2001	Gia Lai	5	Ha nam
66	Siu Un	2001	Gia Lai	16	Ha Nam
67	Y Glu	2001	Gia Lai	7	Ha Nam
68	Siu Seo	2001	Gia Lai	5	Ha nam
69	Siu Tel Released	2001	Gia Lai	5	Ha nam
70	Ksor Poi	2001	Gia Lai	10	Ha Nam

71	Siu Yui	2001	Gia Lai	8	Ha Nam
72	Siu Boch	2001	Gia Lai	8	Ha nam
73	Ksor Kroih	2001	Gia Lai	11	Ha Nam
74	Siu Tinh	2001	Gia Lai	8	Ha Nam
75	Ksor Blung	2001	Gia Lai	5	Ha Nam
76	Siu Ning	2001	Gia lai	5	Ha Nam
77	Siu Beng	2001	Gia lai	7	Ha Nam
78	Prom	2001	Gia Lai	8	Ha Nam
79	Rmah Anhur	2001	Gia Lai	8	Ha nam
80	Kpa Hling	2001	Gia lai	5	Ha nam
81	Puih Em	2001	Gia Lai	7	Ha nam
82	Nay Pham	2001	Gia lai	5	Ha nam
83	Klong	2001	Gia lai	5	Ha Nam
84	Ksor Dar	2001	Gia lai	3	Ha nam
85	Siu Be	2001	Gia Lai	3	Unknown
86	Y Hnoch	2001	Gia lai	6	Ha Nam
87	Siu Grih	2001	Gia Lai	6	Ha Nam
88	Ksor Hnel	2001	Gia Lai	6	Thanh Hoa
89	Goih	2001	Gia Lai	6	unknown
90	Bah	2001	Gia Lai	6	unknown
91	Rmah Teng	2001	Gia Lai	8	Thanh Hoa
92	Rmah Nul	2001	Gia Lai	5	Ha Nam
93	Ksor Bliip	2001	Gia Lai	5	Ha Nam
94	Ksor Doai	2001	Gia Lai	11	Ha Nam
95	Y Yung	2001	Gia Lai	6	Ha Nam
96	Treo	2001	Gia Lai	Unknown	Ha Nam
97	Dinh Giam	2001	Gia Lai	Unknown	Ha Nam
98	Ksor Buh	2001	Gia Lai	6	Ha Nam
99	Y Teo	2001	Gia Lai	5	Ha nam
100	Ban	2001	Gia Lai	Unknown	Phu Yen
101	Bro	2001	Gia Lai	Unknown	Phu Yen
102	Khoi	2001	Gia Lai	Unknown	unknown
103	Nau Guh	2001	Gia Lai	Unknown	Ha Nam
104	Hyun	2001	Gia Lai	Unknown	Phu Yen
105	Bum	2001	Gia lai	Unknown	Ha nam
106	Siu Mat	2001	Gia Lai	Unknown	unknown
107	Rcom Huong	2001	Gia lai	5	unknown
108	Nai nay	2001	Gia lai	Unknown	Ha nam
109	Krek	2001	Gia Lai	5	unknown
110	Bru	2001	Gia lai	6	T-20
111	Ksor Ong	2001	Gia Lai	5	unknown
112	Y Tum	2001	Gia lai	13	Ha Nam

113	Rcom Due	2001	Gia lai	5	unknown
114	Ksor Kroi	2001	Gia Lai	2	unknown
115	Rahlan Hir	2001	Gia Lai	3	unknown
116	Ama Ngoan	2001	Gia Lai	Unknown	T-20
117	Y Gru	2001	Gia lai	Unknown	Ha Nam
118	Nay Djong	2001	Gia Lai	Unknown	Ha nam
119	Siu Bhung	2001	Gia Lai	Unknown	unknown
120	Rmah Hyuh	2001	Gia Lai	Unknown	T-20
121	Rmah Thuk	2001	Gia lai	Unknown	Ha nam
122	Ksor Nom	2001	Gia Lai	Unknown	unknown
123	Bom Jana	2001	Gia Lak	12	Ha Nam
124	Nay Klong	2001	Gia Lak	5	unknown
125	Y Longme	2001	Phu Yen	Unknown	unknown
126	Y Het Nie Kdam Released	2002	Dak Lak	10	Ha Nam
127	Y Tan Nie	2002	Dak Lak	8	Ha nam
128	Y Hoang BKrong	2002	Dak Lak	10	Ha Nam
129	Y Ben Nie	2002	Dak Lak	Unknown	Ha Nam
130	Y Do Mlo	2002	Dak Lak	10	Ha Nam
131	Y Kuo Bya	2002	Dak Lak	13 [12]	Ha Nam
132	Y Tlup Adrong	2003	Dak Lak	12 [11]	Ha Nam
133	Y Bem Nie	2003	Dak Lak	5	Ha Nam
134	Y Kuang Ecam	2003	Dak Lak	8	Ha Nam
135	Siu Bor	2003	Dak Lak	Unknown	unknown
136	Rmah Kuet	2003	Dak Lak	Unknown	unknown
137	Y Jon Enuol	2003	Dak Lak	11	Ha Nam
138	Y Krec Bya Released	2003	Dak Lak	8	Ha Nam
139	Y Yuan Bya	2003	Dak Lak	11	Ha Nam
140	Rahlan Glél	2003	Gia Lai	5	Ha Nam
141	Romah Phing	2003	Gia Lai	5	T-20
142	Rahlan Khol	2003	Gia Lai	7	Ha Nam
143	Kpuih Gyan	2003	Gia Lai	7	Ha Nam
144	Rahlan Tuan	2003	Gia Lai	7	unknown
145	Puih Huy	2003	Gia Lai	6	Ha Nam
146	Ama Rap	2003	Gia Lai	Unknown	Ha Nam
147	Jum, Ama Koi	2003	Gia Lai	Unknown	unknown
148	Rahlan Sang	2003	Gia Lai	Unknown	Phu Yen
149	Noh	2003	Gia Lai	Unknown	unknown
150	Siu Ron	2003	Gia Lai	Unknown	unknown
151	Kpa Thil	2003	Gia Lai	Unknown	T-20
152	Blit	2003	Gia Lai	Unknown	Ha Nam
153	Rcom Glam	2003	Gia Lai	8	Ha Nam

154	Rahlan Sam	2003	Gia Lai	Unknown	Thanh Hoa
155	Croc	2003	Gia Lai	Unknown	Phu Yen
156	KPuih Tin	2003	Gia Lai	13	Ha Nam
157	Y Tui Enoul	2004	`Dak Lak	8	Ha Nam
158	Siu Jun	2004	Ayun Pah	6	Ha Nam
159	Y Thot	2004	Dac Nong	10	Ha Nam
160	Hung	2004	Dak Doa	12	T-20
161	Rmah san	2004	Dak Lak	8	Ha Nam
162	Y Phen Nie	2004	Dak Lak	Unknown	Phu Yen
163	Y Suom Hmok	2004	Dak Lak	Unknown	unknown
164	Y Tlo Kbuor	2004	Dak Lak	Unknown	unknown
165	Y Gin Hmok	2004	Dak Lak	3	unknown
166	Y Hlu Hmok	2004	Dak Lak	6	unknown
167	Y Boi Nie	2004	Dak Lak	3	unknown
168	Y Dhoeng Knul	2004	Dak Lak	8	unknown
169	Y Din Nie	2004	Dak Lak	Unknown	unknown
170	Y OAE Nie	2004	Dak Lak	Unknown	unknown
171	Y Goi Nie	2004	Dak Lak	3	unknown
172	Y Jim Eban	2004	Dak Lak	13	Ha Nam
173	Y Jim Eban	2004	Dak Lak	13	Unknown
174	Y Tuan HDok	2004	Dak Lak	8	Ha Nam
175	Y Jim Eban (Group 1 of 7 UN-Named )	2004	Dak Lak	Unknown	Unknown
176	Y Jim Eban (Group 2, of 7 UN-Named)	2004	Dak Lak	Unknown	Unknown
177	Y Jim Eban (Group 3, of 7 UN-Named)	2004	Dak Lak	Unknown	Unknown
178	Y Jim Eban (Group, 4 of 7 UN-Named)	2004	Dak Lak	Unknown	Unknown
179	Y Jim Eban (Group,5 of 7 UN-Named)	2004	Dak Lak	Unknown	Unknown
180	Y Jim Eban ( Group, 6 of 7 UN-Named)	2004	Dak Lak	Unknown	Unknown
181	Y Ruih (Ruh Eban)	2004	Dak Lak	10	Unknown
182	Y Senat, Ksor Nie	2004	Dak Lak	7	Unknown
183	Y Suan Mlo	2004	Dak Lak	10	Unknown
184	Y Mun Nie	2004	Dak Lak	7	Dai Phat Thanh
185	Y Kur Buon Dap	2004	Dak Lak	17	Unknown
186	Y Ngun Knul	2004	Dak Lak	18	Ha Nam
187	Y Rit Nie	2004	Dak Lak	12 [10]	Ha Nam
188	Y Ngun Knu	2004	Dak lak	5-10	Ha Nam
189	Y Ang Knul	2004	Dak Lak	11	Ha Nam
190	Y Yoan Hmok	2004	Dak Lak	9	Unknown
191	Y Hiu Eban	2004	Dak Lak	Unknown	Unknown



192	Y Nging Nie	2004	Dak Lak	11 [9]	Ha Nam
193	YRit Nie	2004	Dak Lak	5-10	Ha Nam
194	Y Dec Nie	2004	Dak Lak	6	Unknown
195	Dieu Xam	2004	Dak Lak	Unknown	Ha Nam
196	Y Bout B'Krong	2004	Dak Lak	Unknown	Ha Nam
197	Y Net Bya	2004	Dak Lak	10	Ha Nam
198	Yang Knul	2004	Dak Lak	11	Unknown
199	YBuat Bkrong	2004	Dak Lak	Unknown	Ha Nam
200	Y Tho Eban	2004	Dak Lak	8	Ha Nam
201	Y Krong HDok	2004	Dak Lak	8	Ha Nam
202	YRankBour	2004	Dak Lak	Unknown	Ha Nam
203	YSe Nie	2004	Dak Lak	Unknown	Dak Lak
204	YSamoel Mlo	2004	Dak Lak	9	Ha Nam
205	Y Thomas Nie	2004	Dak Lak	9	Ha Nam
206	Nay Het	2004	Dak Lak	8	Ha Nam
207	Thomas Nie	2004	Dak Lak	9	Ha Nam
208	Nay Het	2004	Dak Lak	8	Ha Nam
209	Y Suan Bya	2004	Dak Lak	8	Ha Nam
210	Y Soan Mlo	2004	Dak Lak	8	Ha Nam
211	Y BHem KPor	2004	Dak Lak	10	Ha Nam
212	Y DHam Eban	2004	Dak Lak	9	Ha Nam
213	Y Ixio	2004	Dak Lak	9	Ha Nam
214	Y Jup E Ban	2004	Dak Lak	11	Ha Nam
215	Y Kur BDap	2004	Dak Lak	17	Ha Nam
216	Y Pher HDruc	2004	Dak Lak	12	Ha Nam
217	Y Phu Ksor	2004	Dak Lak	9 [8]	Ha Nam
218	Y Samuel MLo Released	2004	Dak Lak	9	Ha Nam
219	Y Suon BYa	2004	Dak Lak	9	Ha Nam
220	Y Tuan Hmok	2004	Dak Lak	8	Ha Nam
221	Y Jim Eban (Group 7, of 7 UN- Named)	2004	Dak Lak	Unknown	Unknown
222	Y Niem Eban	2004	Dak Lak	10	Ha Nam
223	Y Don Bya	2004	Dak Lak	15 [10]	Ha Nam
224	Y Jut Eban	2004	Dak Lak	10	Unknown
225	Y Jem Hwing	2004	Dak Lak	Unknown	Unknown
226	Y Se Nie	2004	Dak Lak	Unknown	Dak Lak
227	Y Nguyet Nie	2004	Dak Lak	7	Thanh Hoa
228	Y Ben Nie	2004	Dak Lak	14	Ha Nam
229	Y Blec Nie	2004	Dak Lak	9	Ha Nam
230	Y Krat	2004	Dak Mil	3	Unknown
231	Y Nguk	2004	Dak Mil	4.5	Unknown
232	Tuan Rla	2004	Dak Nong	Unknown	Dak Nong

233	YPi	2004	Dak Nong	5	Unknown
234	Y Srun Butrang	2004	Dak Nong	5 [6]	Ha Nam
235	Dieu Minh	2004	Dak Nong	Unknown	Ha Nam
236	Dieu Lon	2004	Dak Nong	Unknown	Ha Nam
237	Dieu Bet	2004	Dak Nong	Unknown	Ha Nam
238	Dieu Blung	2004	Dak Nong	Unknown	Ha Nam
239	Rmah Daih	2004	Gia Lai	7	Ha Nam or Ha Tay
240	Siu Hmrek	2004	Gia Lai	9	unknown
241	Kpa Dok	2004	Gia Lai	8	Ha Nam
242	Ksor Krok	2004	Gia Lai	7	Unknown
243	Ksor Thieu/Thiu	2004	Gia Lai	7 [8]	Ha Nam
244	Ksor TO NI (INO,	2004	Gia Lai	7 [8]	Ha Nam
245	Siu Panh	2004	Gia Lai	4 [5]	Unknown
246	Siu Yun	2004	Gia Lai	4 [5]	Ha Nam
247	Kpuih Chonh	2004	Gia Lai	5	Unknown
248	Ksor Dro	2004	Gia Lai	6	Unknown
249	Rolan Hloe	2004	Gia Lai	7	unknown
250	Ksor Hlun	2004	Gia Lai	11	Ha Nam
251	Ksor Vung	2004	Gia Lai	10	Ha Nam
252	Rmah Alik	2004	Gia Lai	8	Ha Nam
253	Ksor Thup	2004	Gia Lai	10	Unknown
254	Siu Djing	2004	Gia Lai	4 [5]	Ha Nam
255	Ksor Jon/Siu Jon	2004	Gia Lai	4 [5]	Unknown
256	Rahlan Ber	2004	Gia Lai	Unknown	Phu Yen
257	Siu Bop	2004	Gia Lai	8	Ha Nam
258	Byun	2004	Gia Lai	8	Unknown
259	Siu Thuan	2004	Gia Lai	Unknown	Ha Nam
260	Siu Hyek (Hyet)	2004	Gia Lai	Unknown	T-20
261	Kpa Thanh	2004	Gia Lai	Unknown	Phu Yen
262	Rahlan Klao	2004	Gia Lai	Unknown	Phu Yen
263	Rahlan Then	2004	Gia Lai	Unknown	Phu Yen
264	Rmah Xuan [Kuon]	2004	Gia Lai	Unknown	T-20
265	Bum	2004	Gia Lai	Unknown	Ha Nam
266	Kpa Hit	2004	Gia Lai	Unknown	Thanh Hoa
267	Rahlan Del	2004	Gia Lai	Unknown	Phu Yen
268	Kpa Gai	2004	Gia Lai	Unknown	Phu Yen
269	Ksor Har	2004	Gia Lai	Unknown	Nghe Tinh Prison
270	Ksor Jak	2004	Gia Lai	7	Nghe Tinh Prison
271	Nay Liem	2004	Gia Lai	Unknown	Unknow
272	Kpa Ring	2004	Gia Lai	Unknown	Phu Yen
273	Kpa Hit	2004	Gia Lai	Unknown	Thanh Hoa
274	Rahlan Lien	2004	Gia Lai	Unknown	Phu Yen

[NOTE: The remainder of the above material is not reprinted here but is available in committee records.]